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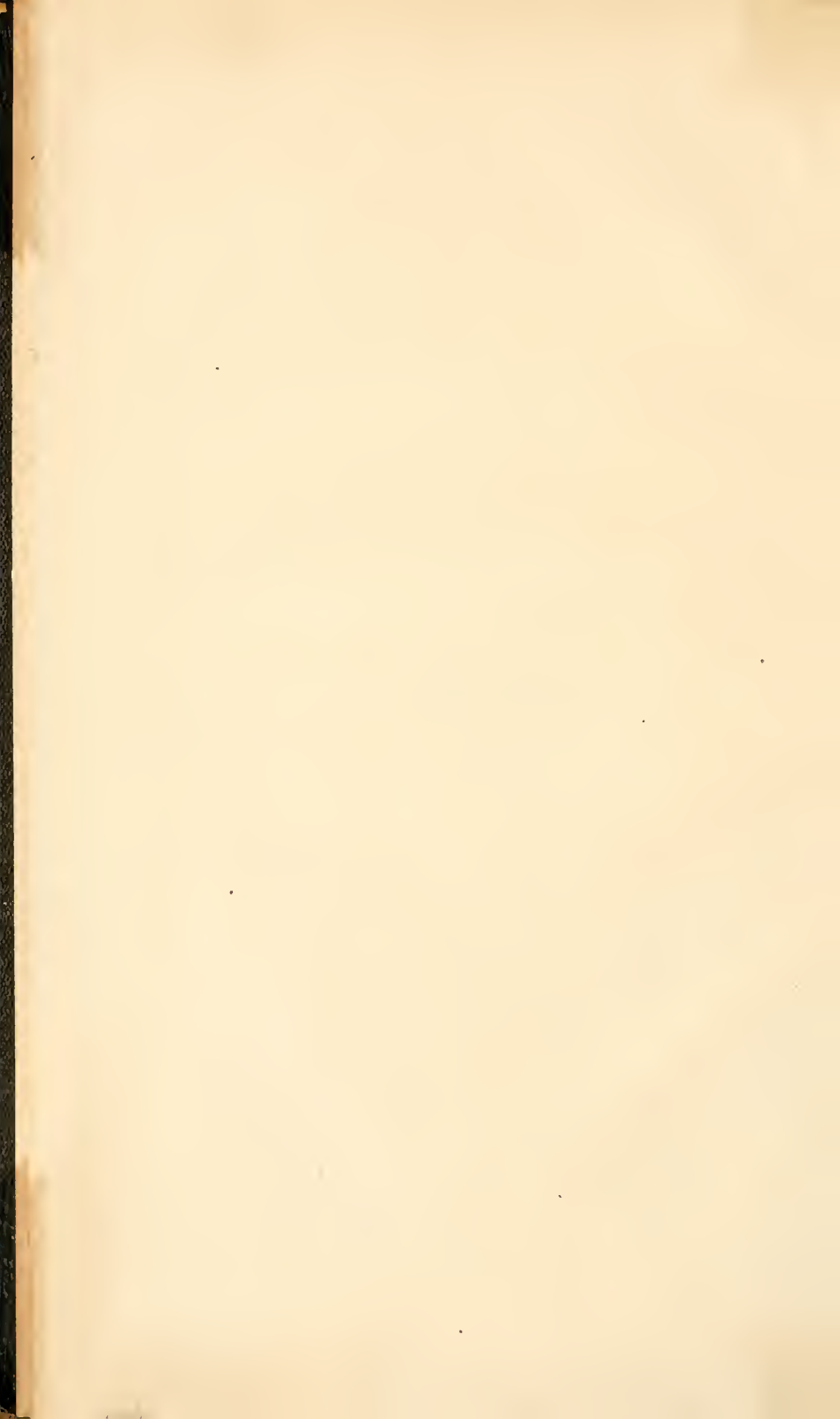
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Chap. *E357*

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UNITED STATES OF AMERICA.



from the Author

AN

IMPARTIAL EXAMINATION

OF THE

CASE

OF

CAPTAIN ISAAC PHILLIPS,

LATE OF THE NAVY,

And Commander of the United States Sloop of War

BALTIMORE,

In 1798.

*Compiled from original Documents and Records, with the Proceedings upon his
application to be restored to his rank in*

THE UNITED STATES NAVY.



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Baltimore:

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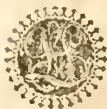
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1825.

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District of Maryland, to wit:

BE IT REMEMBERED, that on the thirteenth day of September, in the fiftieth year of the Independence of the United States of America, Isaac Phillips, of the said District, hath deposited in this office the title of a Book, the right whereof he claims as Proprietor, in the words following, to wit:



"An impartial examination of the case of Captain Isaac Phillips, late of the Navy, and Commander of the United States Sloop of War Baltimore, in 1798. Compiled from Original Documents and Records, with the proceedings upon his application to be restored to his rank in the United States Navy."

In conformity with the Act of the Congress of the United States, entitled "An Act for the encouragement of learning, by securing the copies of Maps, Charts and Books to the Authors and Proprietors of such copies during the times therein mentioned;" and also to the Act, entitled "An Act supplementary to the act, entitled, an act for the encouragement of learning by securing the copies of Maps, Charts and Books to the Authors and Proprietors of such copies during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving and etching Historical and other prints."

PHILIP MOORE,

Clerk of the District of Maryland.

TO THE

PEOPLE OF THE UNITED STATES.

TH**ERE** are events in the lives of most men, capable of eliciting public censure or applause; for in all, the public have a common interest. This is true in regard to the ordinary transactions of life; but that interest is increased, when the conduct of an individual, who holds a responsible public station, is called in question. Whenever this happens, the public have a right to scrutinize his acts; to examine into the nature of his public duties; the manner in which he has discharged them; to express an opinion of the propriety of his conduct, and to censure or approve as he may seem to deserve. What the community do from a spontaneous expression of feeling in one case, they perform of right, and as a matter of duty, in the other. When correctly informed, public opinion is usually just. Unless blinded by passion or prejudice, or deceived by misrepresentations, it seldom errs, and is, therefore, entitled to a high degree of respect. It is a tribunal to which every one may safely appeal for redress against oppression and injustice; or for justification under unfounded censure, or malicious calumny.

In this country, from the nature of our civil institutions, the character of our government, and the habits and feelings of our citizens, public sentiment is omnipotent. The maxim, "*vox populi, vox dei*," has long been received, and has become universally popular. And as the public maintain and exercise the right of deciding upon the conduct,

and even motives of individuals, they, in return, have an equal right, to appeal to that public, for a full hearing; for a fair and impartial trial, of every charge, upon which any one may chance to be arraigned. Pure and unsophisticated as are our habits and principles: virtuous, intelligent and upright, as are our tribunals of justice, and public functionaries, *yet even here*, in this land of republican liberty, and under a government of laws, *this privilege is invaluable*. Before this august tribunal, all meet together upon terms of equality, and stand forth upon the same extended plane of free citizenship. Here, no dark intrigue, no low chicanery, no undue influence, no petty rules or miserable technicalities, can be seized upon and enforced, to pervert the course of justice, and stifle the truth. Public feeling is always true to justice, and though its expression may sometimes be retarded, yet, sooner or later, its *voice will be heard*, and whenever it is, it will proclaim the truth, and be respected.

With these impressions, I present myself before an enlightened community, whose good opinion I have never forfeited, and am anxious to retain. I come before them for a full hearing, and an impartial adjudication. The vindication of my honour as an officer, and as a man, is a solemn duty I owe to myself, my friends, and my country. I owe it even in courtesy to my enemies, to repel the unjust aspersions that have been attempted to be cast upon my public conduct. Even at this *late period*, it cannot be thought an intrusion. A soldier's honour is, and should be, dear to him. It is the jewel he has worn nearest his heart, when that heart was warm with hope and honest ambition. It is the price of his life's blood, and he should as soon shed the last drop of the one, as disregard the other. It can never be too late, therefore, to demand justice from honourable men, or to expect redress for undeserved reproach, from an impartial public: which has a deep interest to promote, in atoning for its wrongs, but no fair inducement to persevere in error.

Few persons conversant with the political history of our country, from the year 1796, to 1800, can have forgotten the events of that period. That party spirit, whose rancour has so long embittered our social intercourse, was then in its infancy; but rapidly increasing, in strength and vigour, to a sturdy manhood. The popular measures of our government, to meet the exigencies of the country at home, and the peculiar state of our foreign relations, particularly with England and France, produced results and feelings, that need but be *named*, to be *remembered*.

At this period of time, it was my fortune to hold a public station; and in the state of our affairs, one that was highly responsible. Some portion of my official conduct, has, long since, passed the ordeal of public opinion, and efforts have not been wanting, to render that opinion prejudicial to me. To burnish the whole of my public conduct, therefore, from the rust that time and neglect have collected around it, and present it in its native brightness before the world; to redeem its history from the base misrepresentations, and daring falsehoods, which malice, interest, or fear perhaps, have heaped upon it, *till its very record is a libel*; and to lay a plain unvarnished tale of truth before you, is one object of this publication. Another is, to seek that justice from my country and the opinion of my fellow citizens, which I have never forfeited my right to demand, of them, and the world.

Circumstances, of a peculiar character, have conspired, to produce this delay. Events, over which it was supposed, oblivion had spread its mantle, have come to light; witnesses, whose existence was unknown, and who were thought to have been gathered to their fathers, have appeared again; and if justice and truth are stamped with the character of eternity, there is no *act of limitation* to bar their claim to respect, although twenty-five years *have elapsed*, since the events alluded to took place. Whether under the circumstances of my case, I shall lose all right to legal redress, by this delay, is not for me to determine. Whether I deserve to suffer so much unrequit-

ed, or not, I ask your candid judgment. Be that what it may, I shall gain what has, most unjustly, been attempted to be filched from me, the good opinion of my countrymen. The justice of my cause, the integrity of my conduct and the purity of my motives, forbid me to doubt it. The intelligence of the people of the United States; their respect for justice, and their high sense of honor, all assure me, that I need not fear their decision.

The only history of this transaction, that has reached the public, which, at the time it happened, created much excitement, is contained in the first volume of the *Naval Chronicle*, published at Washington in 1824. That account is collected from such materials, as the department, at that time afforded. How far they are to be relied upon, in this case, will appear, perhaps, to the satisfaction of every one. Of their errors, if any should be pointed out, and proven, and how they occurred, the public will judge. And that no information should be withheld, I shall publish all the *Chronicle* contains, relating to my case.

From the United States' Naval Chronicle.

"On the 8th January, 1799, the President of the United States communicated to the House of Representatives, in compliance with their resolution of the 2d of that month, the following circumstances, in relation to the outrage committed on the United States' ship of war, the *Baltimore*, of twenty guns, under the command of Captain Isaac Phillips.

Extract of a letter from George C. Morton, Esq. acting Consul of the United States at the Havana, to the Secretary of State, dated Havana, 18th November, 1798.

"By the delegation of Daniel Hawley, Esq. I am at present acting as Consul of the United States, in this district. It imposes upon me the mortifying task, sir, of informing you of the partial capture of an American fleet, under the convoy of the *Baltimore* sloop of war, Isaac Phillips, Esq. commander, by a British squadron, off this harbor, accompanied with circumstances rather grating to the feelings of Americans, and by no means analogous to that good harmony, which seems to subsist between the two governments.

"The answer of Messrs. Trezevant and Timmons, to my note of the 7th instant, requesting an exact relation of the occurrence, will, I presume, be deemed as impartial a narrative as can be given, of the whole transaction, they having been passengers on board one of the captured vessels, and removed to the *Baltimore*."

Lewis Trezevant and William Timmons, Esqs. to G. C. Morton, Esq.

HAVANNA, NOV. 18, 1798.

"SIR—Agreeably to your request, we now commit to writing, the best account we are able to give you, of the conduct of Captain Loring, commodore of the British squadron, which was lately off the Moro, towards the United States' ship the Baltimore. We must observe, however, that all we can say of it, is from the information of Captain Phillips, as we were not on board of the Baltimore when she was visited by Captain Loring's officers.

"In the morning of the 16th inst. we discovered this squadron, when we were in sight of the Moro, and afterwards found it was composed of captain Loring's ship, the Carnatick, of seventy-four guns; captain ——'s ship, the Thunder, of the same force; captain Dobson's ship, the Queen, of ninety-eight guns; captain Donolly's frigate, the Maidstone, of thirty-two guns, and captain Hardy's frigate; the Grey Hound, of the same force. We were passengers in the brig Norfolk, captain Butler, which, together with the ship Eliza, captain Baas, and the brig Friendship, captain Fuller, were cut off from their entrance into port, and were all made prizes within gun-shot of the Moro. We obtained leave to go on board the Baltimore with our baggage, and did so. When captain Phillips discovered that they were English ships, which was before we were taken, he stood towards them, and spoke the commodore. After we got on board the Baltimore, the captain informed us, that he had been on board the Carnatick, and that the Commodore had told him, that he should take out of the Baltimore, all such men as had not American protections; that he had remonstrated with him against showing such an indignity to our flag; that to do so, would leave his ship in a very defenceless state, and would deprive him of nearly all his men, as not even those who were really Americans, or, at least, very few of them, could show protections, because it was always thought that our flag, on board of a government ship was a sufficient protection. All this, however, was urged in vain. Captain Phillips returned to his ship, and the commodore sent an officer on board the Baltimore, who carried away fifty-five of her men to the Carnatick. Captain Phillips remained in expectation that nearly all the rest would be taken from him; but whether the commodore, upon reflection, thought better of it, or whatever else might have been his motive, he sent back fifty, and kept five, among whom was the ship's boatswain.

"Captain Loring proposed to give up a number of American seamen, who, he said, were in his fleet, if Captain Phillips would give him English subjects for them.* Captain Phillips refused this offer, and the American seamen were not delivered to him. Before any of the men were returned, he sent a message to Captain Phillips, to let him know, if he, or one of his officers, would go on board of him, and point out who were Americans

*This proposition was made *after* commodore Loring had ordered fifty-five men out of the Baltimore, and detained five of them, as being British subjects, without giving an equal number of Americans, whom he *acknowledged* to have on board.

and who were not, he would return all the Americans; but this was declined also. After we got on board of the Baltimore, he sent a letter to Capt. Phillips, which he showed to us, in which the commodore "*demand-ed*" that he would give up all the British subjects on board the Baltimore. To this, captain Phillips replied, that he could not know any of his men as British subjects, nor could he, as commander of a ship in the service of the United States, voluntarily give up any of his men; but if he thought fit to send an officer on board, with orders to take any number of his men, he should not oppose it. In this answer, captain Phillips mentioned he should lay before the Executive of the United States, a full account of the occurrences of the day. Shortly after sending this reply, the squadron set sail and left the Baltimore. Commodore Loring was very polite to us, and was so to Captain Phillips, when he went on board; but Captain Phillips complained of indecent behaviour from the inferior officers."

Captain Phillips' account of this affair, is as follows:

While he was convoying a fleet of merchant vessels, from Charleston, S. C. to Havana, he discovered a British squadron; and knowing the vexatious detentions, and sometimes captures, to which our merchant vessels were exposed, from British cruizers, and anxious to see those under his charge safe in port, he hoisted the signal of alarm, directing all the vessels under his convoy to spread all their canvass and use every exertion in their power to gain the port of Havana. As soon as he perceived that his signal was understood, he bore up for the flag ship of the squadron, in order to divert its attention from the fleet under his convoy; every one of which, excepting the three mentioned by Messrs. Trezevant and Timmons, succeeded in getting into port. Those three, after a few hours detention, were released, and arrived safe.

When the Baltimore had got up to the flag ship, commodore Loring invited Captain Phillips on board the Carnatick, who accepted the invitation. While on board, commodore Loring informed him, that he should take out of the Baltimore such men as had not American protections; to which captain Phillips replied, that such a proceeding could not but be considered as an indignity to the flag of the United States, which, of itself, according to the usages and customs of nations, protected every individual sailing under it, and particularly those in an armed national ship; that if commodore Loring persisted in the determination he expressed, he, captain Phillips, would, in that event, be constrained, by the great inferiority of his force, to surrender his ship.

Captain Phillips then returned to the Baltimore, where he found his crew mustered, *with the consent of his first lieutenant, obtained in his absence*, by a British officer, who had the muster roll of the ship in his hand, and in the act of executing the commission upon which he had been sent, viz. "to take from the Baltimore, such men as had not American protections." The British officer announced his errand to captain Phillips, with an expression of his regret at having been charged with so unplea-

sant a commission, which, however, he was bound to execute. Capt. Phillips took the muster roll from his hand, ordered his crew to quarters, desired the British officer to walk the leeward side of the quarter deck, until he should decide as to the reply which it became him to make, in a case so extraordinary in its character. Had he have yielded to the first impulse of his feelings, he would have destroyed the British boats first sent to his ship and prevented the officer from executing his commission, until, by the exercise of force, the British squadron should have compelled him to surrender his ship; but recollecting that he had no commission, no paper recognizing the Baltimore as a national ship, and adverting to the instructions under which he was cruising, which, in his opinion, indicated an *extreme* disinclination, on the part of the government, to pursue any other than the most conciliatory course of conduct towards all nations, excepting France, he determined to consult Mr. Trezevant, *who had just come on board*, a lawyer by profession, and abide by his advice on the occasion. He went into his cabin, and there informed Mr. Trezevant, that he had not a solitary paper signed by the President of the United States, excepting the laws, which any individual might obtain, by purchase or otherwise, and which could not be considered as indicating the national character of his ship, and he submitted his sailing instructions, (of 9th August, 1798,) of which the following is an extract:

"The vessels of every other nation, (except France,) are on *no account* to be molested; and I wish particularly to impress on your mind, that should you even see an American vessel, captured by the armed ship of any nation at war with whom we are at peace, you cannot lawfully interfere to prevent the capture, for it is to be taken for granted, that such nation will compensate for such capture, if it should prove to have been illegally made." Mr. Trezevant, having considered the subject, advised captain Phillips not to resist the execution of commodore Loring's order, but to let him take his own course, protest against it, and refer the case to his government. Captain Phillips then went upon deck, and informed the British officer of his decision, which was that advised by Mr. Trezevant.

Captain Phillips then struck his flag, and informed commodore Loring, that the United States' ship Baltimore was surrendered to the squadron under his command; and fifty-five of the crew were taken away.

After a short detention, commodore Loring, in consequence of a *special* note written by captain Phillips to him, and apprehensive, it is presumed, of his conduct not being approved by his government, to whom he knew, from Captain Phillips' communication, it would necessarily be made known, sent back fifty of the men he had taken from the Baltimore, retaining five; and he then made the proposition stated by Messrs. Trezevant and Timmons, and after receiving captain Phillips' reply, he set sail with his squadron, and left the Baltimore.

Captain Phillips, finding that the British squadron declined taking possession of his vessel, which had been surrendered, re-hoisted his flag, went into Havana, where he obtained necessary supplies, and taking under his protection a number of homeward bound vessels, returned to the

Chesapeake, and immediately proceeded to Philadelphia, and submitted to the Secretary of the Navy a narrative of this outrage, stating minutely his own conduct and that of commodore Loring. He expressed, to the Secretary of the Navy, his wish to have a personal interview with the President of the United States, that he might answer any questions which the President might propound to him. The reply led him to believe that his conduct would not be disapproved, and that an interview with the President would be altogether unnecessary; that he might return to Baltimore, where he would receive further orders, respecting the destination of his ship. He, accordingly returned to Baltimore; but two days after his arrival there, instead of receiving orders for service, as he had been led to expect, and for which he was preparing himself, he received, to his utter astonishment, a letter, (10th January, 1799,) from the Secretary, dismissing him from the Naval service of the United States.



The following letter from the Secretary of the Navy, to Captain Phillips will show the grounds on which he was dismissed; 10th January, 1799.*

“SIR—“Your narrative of the transaction with the British Captain, near the Havana, has been attentively considered; and with every disposition to make allowance for the unprecedented situation, to which you were exposed, it is impossible to find an excuse for some parts of your conduct; among these, it will be sufficient to mention your *tame submission to the orders of the British lieutenant, on board your own ship.*

If you could not have resisted the assumption of the command of your own ship, by that officer, a point not to be admitted, surely, you might have contented yourself with passive submission; but you descended further, and actually obeyed his orders, to have all hands called, and to give him a list of their names. Under circumstances so degrading, it is improper that you should hold a commission in the Navy service of the United States; and I am commanded by the President to inform you, that your services are no longer required.

“I am, respectfully, your most obedient servant,

“BEN. STODDERT.”

This letter of Mr. Secretary Stoddert, from the circumstances under which it was written, is a most extraordinary document. He says, “my narrative of the transaction with the British Captain has been *attentively considered;*” and yet the very first paragraph of his letter closes with a charge, which, by any fair rule of construction known in our language, it is impossible to infer from the narrative.

*This is not the letter received by Captain Phillips, but one which was substituted in its place, which is proved by a letter from D. Winchester, Esq. to Captain Phillips.

There is not a word in it, on which such a charge can be justly founded; or even an inference be fairly drawn: but on the contrary, they are directly and positively contradicted by a full statement of the facts. What was my "*tame submission to the orders of the British Lieutenant, on board my own ship?*" Does the narrative contain any thing from which such a charge can be made? His letter purports to have been predicated upon *my narrative* which he had so "*attentively considered,*" and yet it breathes a spirit foreign to its import, and contains allegations falsified by its express terms. Is its meaning and purpose explained in the succeeding paragraph, where I am charged with "*descending to obey his orders; have all hands called and giving him a list of their names?*" The narrative does not charge me with doing these things, but, on the contrary, it states that I had no agency whatever in any of them; that they took place while I was absent from my ship; and so far from my giving him a muster roll, or list, as he calls it, I took the one *he had received from my Lieutenant*, from him, when I came on board. Every fact and circumstance detailed in this narrative contradicts the assertions contained in this singular production, and prove that these charges were sought after; that they were far-fetched, false and unfounded. Whether they were *maliciously* made, also, the public will judge, when the whole case is before them.

There is one circumstance, however, that is proper for me to notice here. This letter published in the Chronicle, is a *record* of one purporting to have been sent to me by the Secretary of the Navy, Mr. Stoddert, by the direction of the President of the United States, notifying me of my dismissal from the naval service of my country, for reasons therein contained. These reasons never had existence in fact, nor had the Secretary any authority for assigning them as the cause of my dismissal. For if his own declarations are to be taken for proof, all the foundation he had for the reasons he assigned, *was contained in my narrative*, and it is believed, that none can be found there.—

This letter, it must be remembered too, was written by the Secretary; it bears his signature, and was put upon the records of the Navy department, over which he then presided by himself, or by his order, for it is there found, and published to the world, as the *record* of the one sent to me. In the presence of that public whose judgment I invoke in this matter, *I most solemnly deny* that this is a record of the letter of dismissal which was sent to me by Mr. Stoddert, but a letter of a different character and import throughout. I absolutely deny that I ever received, at any time, from any person, such a letter as is here published; nor did I know that such an one was in existence, until I saw it in the Naval Chronicle. Had I received such a letter as this, containing such palpable falsehoods and bold misstatements, at a time too, when I could so easily have refuted them and have justified myself, to the most interested and credulous; the power of the united world should not have stifled my demand for a public investigation of my conduct. *I would have been heard* and judged by my countrymen, at least, if there had been a press in the nation with independence enough to have published the truth.— But I repeat, that no such letter was ever received by me at any time. The one I did receive, simply informed me of my dismissal, without assigning a single reason for it. I shall not rest this fact upon my naked assertion; but I will prove it, and when the evidence is produced, I trust it will be satisfactory. This evidence may do more: it may furnish reasons for this extraordinary record. For man never acts without motives, and “facts are such stubborn things,” that motives may *sometimes* be drawn from them.

It may, perhaps, be asked, why I did not immediately demand an investigation of my conduct? I did, and it was denied me, by Mr. Stoddert, in the name of the President. It may also be demanded, why I did not then publish the facts to the world. This is my answer. Mr. Stoddert informed me, in answer to my demand for a trial, *that the President assumed the right to dismiss an officer of the army or navy without a trial*, and in my case he had exercised

that right, and that nothing further could be done. I had then no reason to suppose that any unfair management had been practised towards me. Previously to my leaving Philadelphia, Mr. Stoddert informed me that the PRESIDENT was *perfectly satisfied* with my conduct; that an interview, at that time, was unnecessary, as he was desirous I should return to Baltimore without any delay, and prepare immediately for another cruise, for which he then gave me some directions. This conversation took place in Mr. Stoddert's office, on the 9th day of January, 1799, and in confirmation of what he then said; to shew his sincerity, and to silence all disquietude in my mind, he then handed me my commission, *which I had never before received*, referring back to the date of my appointment in the service. I left Philadelphia the same day, and returned to Baltimore. Under these circumstances, judge of my surprise, when, instead of receiving my final orders by the next mail, as I had been told I should, I received my dismissal from the service. With every appearance of the *most perfect satisfaction* with my whole conduct in this affair; of his and the President's undiminished confidence; after confirming this by repeated declarations; after requiring my further, and immediate services; giving me my commission and a part of my instructions for another cruise; yet on the very next day after all this had taken place, on the 10th day of January, 1799, this same Mr. Stoddert prepares and sends me a letter of dismissal from the service; and if he is to be believed, *this very letter which now appears of record* predicated too upon *my narrative*, which had been in his hands long before my commission was handed to me; before any of the circumstances now enumerated had taken place, and before my services were again required. How, I ask, did all this happen? Was not every part of my conduct as well known on the 9th, as it was on the 10th of January? Did not my narrative contain the same evidence of my misconduct when my commission was delivered to me, that it did the next day? If the *President was satisfied with my conduct* when he signed my commission, which is certainly a

fair presumption, did any thing happen to change his opinion the day after? The evidence did not alter, and if the Secretary is entitled to credit, *it was the same and no other*, than that which lay before him when my commission was made out; *if he is not*, then we must seek elsewhere for an explanation of this mysterious conduct. I felt so indignant, that in two days from the time when I had received, through the proper organ, Mr. Secretary Stoddert, the *most unqualified assurances of the approbation and confidence of my government*; when it is hardly possible that any thing new could have transpired to change the feelings and opinions of the President, *or even the Secretary*, towards me, to be basely dismissed from the service without a hearing, or a cause being assigned for such an harsh and summary proceeding; and when I afterwards demanded a trial, and that was refused, I scorned to apply a second time, even for redress of my wrongs. I retired from the service with disgust, at conduct so unjust and capricious. I then believed, that I was sacrificed as a kind of *peace offering* to satisfy some stroke of policy. I supposed the President had exercised the power, however unjustly, that he thought he possessed, and would not recede. I concluded he would fear my justification, after what had taken place, lest the injustice he had done me should recoil upon himself, and increase that popular clamor which had already become formidable. Proud in the integrity of my own conduct, I disdained to beg as a favor, what, as a right, to which I thought myself entitled, had been denied me—a public trial. The Chronicle proceeds:

It is greatly to be regretted, that captain Phillips' original narrative has shared the fate of many other official documents; it being burnt, in 1814—and that no copy was retained by captain Phillips himself, nor any record by the Navy Department, where it ought to have been recorded, with the letter founded upon it. This is a defect, which can be but partially supplied, by the memory of those who read the narrative soon after it was received. We distinctly remember to have read it with great attention, and that there were passages in it, justifying the inferences drawn by Mr. Secretary Stoddert; such passages for instance, as the following:—"When the British lieutenant arrived on board, he required the

muster roll of the ship, which was delivered to him, and the men were mustered," But captain Phillips did not say, *by whom* the muster roll was delivered, nor *by whom* the men were mustered. His own subsequent statement shows, that *he* was not on board the Baltimore at the time these transactions took place—that when he got on board, he found the muster roll in the hands of the British lieutenant, took it from him, desired him to walk the leeward side of the quarter deck, until he could make up his mind as to the course of conduct it became him to pursue, and retiring into his cabin, consulted Mr. Trezevant, and finally, agreeably to his advice, returned again upon deck, and informed the British lieutenant, that he should not resist the execution of commodore Loring's order—but protest against it—and submit a full statement of the occurrence to his government. He then struck his flag, and fifty-five of his crew were taken away.

When captain Phillips received the Secretary's letter, dismissing him, he requested, in terms, not over courteous, an opportunity of justifying his conduct before a court martial; and stated that his narrative had been presented, not for the purpose of defending his proceedings, but rather to enable the government to communicate with, and obtain redress from the British government, for the outrage committed on our national flag; that there were many circumstances essential to his defence, not mentioned in the narrative. A court was, however, refused him; and he has ever since felt himself to have been unjustly, if not cruelly treated, on this occasion.

One of his friends, in the year 1820, undertook to communicate with the late President, Mr. Adams, with a view to ascertain his sentiments upon the subject, the dismissal having occurred during his Presidential term; and the following will show the result:

The narrative published in the Chronicle, is the same in substance as the one first delivered to the Secretary. They do not deviate in a single material point. Besides which, the statement of President Adams confirms it.

Extract of a letter from Doctor Benjamin Waterhouse, to Captain Isaac Phillips, dated Cambridge, 5th August, 1820.

"Having heard from you, and oftener from others, an account of your sudden dismissal from the service of the United States, in the administration of President Adams, and having always heard it spoken of as a hard case, I was determined, the first good opportunity, to speak to Mr. Adams on the subject. Such an one occurred, and I improved it.

"His narrative of the affair corresponded with your own. He said that commodore Loring fell in with the United States' sloop of war which you commanded, and being in a ship of the line, accompanied with several frigates, he caused you to be boarded, and by force took from you fifty-five men, which it was not in your power to prevent, unless you blew your ship up; that you directly thereupon struck your colors, and judiciously surrendered yourself to such an irresistible force; but that the

British commodore refused to take your ship, or to consider her as captured, and insisted that you should re-hoist your colors, and go from him, which you very properly refused to do, but demanded of him the men he had impressed; and that you then wrote to the commodore, reiterating your demand, and giving him your reasons for persisting in considering yourself captured by a greatly superior force; all of which, Mr. Adams said, was very proper, and just as it should be. That, when commodore Loring found, by your letter, that it was not a contest between an American captain of a sloop of war, and the commander of an English squadron, but was like to be a national question, he sent fifty of the impressed men back to your ship, and retained five. Upon this, it seems, you unluckily re-hoisted your colors, and proceeded on your way. You did not sufficiently consider, that by the forcible detention of those five men, the sovereignty of the nation, of which your colors were the emblem, was forcibly prostrated and disgraced, and that it was left to the nation to vindicate and revenge the insult. It was this *error of judgment*, that cost you your commission.

"There are cases, and yours was one of them, where Kings and Republics find it expedient to sacrifice an individual to establish an important principle. The British have done it often. But then the *King*, who is a permanent chief magistrate, takes care to apply a healing plaster to the wounded officer; and after a year or two's suspension, gives him a larger ship, or a more profitable employ. But this cannot always be done in such a government as ours. When a President retires to private life, his successor may, possibly, not feel himself disposed to soothe all the painful feelings excited by a predecessor."

It will be perceived, that Doctor Waterhouse, in this letter, after relating the observations of Mr. Adams, proceeds to put his own construction upon my errors. At first sight, it might be supposed, he had only given us the opinions of Mr. Adams, relative to the transaction, which was the subject of their conversation. But a moment's reflection will convince any one, without other testimony, than his knowledge of Mr. Adams, that it is impossible he ever could have thought, that my "*rehoisting my flag, and proceeding on my way*," as the Doctor terms it, was an error. The wrong was suffered when the men were taken from my ship, by a force I could not resist. The disgrace to the American flag was then consummated, and it was not in my power to have prevented it. The aggression was committed and the character of this outrage upon our national sovereignty would not have altered, had I remained where

I was till doom's-day, or have followed the British squadron into Portsmouth. It is impossible for a man, with the clear and discriminating mind, sound judgment, and purity of principle, for which Mr. Adams has, all his life, been eminently distinguished, ever to have come to the conclusion, that by this act, I had compromised the character of the American flag, and the dignity of the nation. He never could have believed from the history of this transaction, from all that had been said or written upon the subject, that I did not perfectly understand, that the detention of five men out of my crew, was as much a violation of our national rights, as if the *whole crew* had been forcibly taken away from me, and detained against my will. The particular injury might have been greater in one case than the other, but the national insult, the indignity offered to the American flag, would have been the same in both. It did not require the profound talents of President Adams, or the extensive learning and research of my excellent friend, Doctor Waterhouse, to illustrate a proposition, plain and intelligible to the greatest dunce in the navy, or I may add, in the nation. And as to any error of judgment, I am at a loss to determine in what that consisted, unless it was that I did not remain, God knows how long, till this time, perhaps, where the British left me. I would like to know what could have been expected of me? I had *struck my flag, and surrendered my ship* to a superior force, which I could neither resist or escape from; the British refused to take possession of her, sailed away and left me. What in this emergency was to have been done? Should I have followed them, remained where I was, till drifted by the winds and tide to some other station, or have pursued my voyage? Common sense seems to point out but one course, and that I pursued; and few men, it is believed, under similar circumstances, would have acted differently. And yet, if the impressions of Doctor Waterhouse are correct, this was an error of judgment that cost me my commission. If this is true, it was well gotten rid of. If, circumstanced as I was, *with such instructions as I had*, my commission was

forfeited for *such a cause*, it was not worth possessing. It would have disgraced any *honorable man* to have held the paltry thing for a single hour, by such a tenure. If this was disgracing the American flag, what indignities has it not since suffered, without a murmur! President Adams never could have formed such an opinion, or for a single moment, have entertained such a notion. And had my worthy friend, the Doctor, been as much at home in this affair, as he usually is in what he undertakes, he never would have cherished so wild a fancy.

Besides, this is entirely a new charge; altogether different in character, from those alleged against me, with so much confidence, by Mr. Secretary Stoddert in his *recorded* letter of dismissal. He says I was dismissed for *submitting to the orders of a British officer; for calling my men, and giving him a list of their names*: in short, for assisting him to disgrace my own flag. And yet, notwithstanding all this, I was commissioned in the service by this same Mr. Stoddert, immediately *after all these degrading and unofficer-like acts* were known to the government, and the nation. Is this to be credited by sober, thinking, well informed men? There is, however, more truth in the following remark, in the letter of Doctor Waterhouse, "*that kings and republics sometimes find it expedient to sacrifice an individual to establish an important principle.*" But in my case, if a sacrifice was required, it was not to *establish a principle*, but to shift the responsibility for errors, from those who had committed them, to others, against whom, a pretext for blame might be seized upon, with some prospect of success. On the receipt of the foregoing letter, I wrote to Doctor Waterhouse.

Letter from Captain Isaac Phillips, to Doctor Benjamin Waterhouse, dated 19th August, 1820.

BALTIMORE, 19th August, 1820.

Doctor Benjamin Waterhouse,

DEAR SIR—Owing to circumstances, I have not had an opportunity to acknowledge the receipt of your esteemed favor of the 9th ultimo, dated at Philadelphia.

A few days since, I had the pleasure of receiving your highly esteemed letter, dated Cambridge, 5th instant, which I assure you has caused me more pleasure than any letter I have received during life, the subject of which, is most interesting to my feelings, and on which you will have to excuse my long remarks. I feel grateful for the interest you have discovered, in making me the subject of conversation with the venerable Mr. Adams, as well as for his free communication relative to my sudden dismissal from the naval service of the United States. I cannot but express my surprise, that Mr. Adams should have recollected so many circumstances attending that extremely unfortunate affair, which occurred between myself and the squadron under the command of Commodore Loring; consisting of the Carnatic, 74, Thunderer, 90 guns, Queen of 90 guns, and I think three frigates, which I fell in with in the United States ship Baltimore, off the port of Havana, while convoying a fleet of about thirty sail of Americans from Charleston, S. C., all of which obeyed my signal in time to arrive at Havana, except two or three ships, which the British frigate cut off before they could pass the Moro at the mouth of the port, but which were, however, released, in a few hours, and arrived safe.

You have stated many of the most important circumstances connected with that affair, but I feel it necessary, even at this late period, to notice one very important fact, of which I am apprehensive Mr. Adams has always been ignorant, as the knowledge of it, *would have criminated the then Secretary of the Navy, Mr. Benjamin Stoddert*, whose neglect should have cost him his office. I allude to the fact of his ordering me to sail without forwarding me my commission, which I never received, and consequently had none on board—nor had I any document to shew that she was a ship of war of the United States, nor even the signature of the President to any paper on board, except to the printed acts of Congress. I fortunately, or *unfortunately*, had my appointment in the Navy, the only document I had to prove the character of the ship, if I had not

have had this document, Commodore Loring ought to have captured my ship, and treated myself and crew as *Pirates*; I ought to state also, that in my *private* letter from Mr. Stoddert, I was instructed, “*in case any unpleasant occurrence should take place between me, or my ship, and a ship or ships of war of any power, with which the United States were at peace, to act on terms of conciliation.*” This language made a deep impression on my mind, and seemed to anticipate some such occurrence as did take place.

Thus situated, it only remained for me to act as would, in my opinion, meet the approbation of the government.— On my return, I went to Philadelphia, and handed a narrative of the transaction to the Secretary of the Navy, requesting the indulgence of a personal interview with the President, in order to answer any questions he might think proper to ask me. The Secretary replied, that it was unnecessary, as the President was satisfied with my conduct and requested me to return to Baltimore, if I wanted to stay with my family for a few days, where he would send me orders respecting the future destination of my ship. I immediately left Philadelphia, the next day arrived home—and on the second day after my arrival, to my utter astonishment, instead of the approbation of my government, I received a dismissal from the service of the United States, without assigning any reason for so precipitate a measure. The news of which soon became public among all parties, and all expressed their surprise. My house was filled with gentlemen of both political parties, offering advice. The republicans urged me to publish the whole transaction, including my *private instructions*. The federalists reprobated this advice, suggesting, that if the government had found it necessary to sacrifice me—they would in some short time give me a larger ship, and that I ought not to publish my private instructions on any account. I was ruled by the latter advice. I however, applied to the Secretary of the Navy for a trial by court martial—his answer was, that it was inadmissible, that the President had the right to dismiss any officer from the service without giving any

reason for the act. Here ended all negotiations with the Navy Department, and left me quietly to conclude myself sacrificed; my honor and character as an officer disgraced; an inexpressible injury done to my feelings, the sense of which I cannot yet forget. I wish you to be informed, that it was altogether the wish of my federal friends here, that I accepted a command in the service, and not an honor of my own seeking; but I had the vanity to suppose myself as capable to command a ship of war as most men in the United States; inasmuch as I was at sea in ships of war during the greater part of our revolutionary war. I fear I am tedious, but you must indulge me in remarking upon some observations in your letter. You say, "upon this it seems you unluckily, rehoisted your colors and proceeded on your way," and "which error of judgment cost you your commission;" you might have said forfeited your *command*, for commission I had none. Now, my good friend, what could I do. Fifty out of the fifty-five impressed men, were returned to my ship, and the *great Commodore Loring*, had nothing further to say to me, I had struck my colors and surrendered my ship, and he had refused to receive her. I repeat, what was I to do? Ought I to have remained at sea, or proceed on my destination, by convoying a fleet of merchantmen from Havana to the United States. I chose the latter, and in the performance of that duty, studied the best interest of the merchant service, and consequently, that of my country.

It may be urged, that I ought not to have sailed without my commission. This was my opinion, for after my ship was manned and ready, I waited two days for my commission, but it was not sent, and the committee (whose duty it was to fit out my ship, as one of the subscription ships,) became very uneasy, stating that there was an hundred sail of American merchant ships waiting at Havana for convoy home, which convoy was to consist of the *Constellation*, *Commodore Truxton*, and myself in the *Baltimore*. Influenced by the persuasions of this committee, I sailed without a commission; and in obedience to my orders, put

myself under the command of Commodore Truxton, and stated to him my want of that document. He expressed his surprise, but remarked, that as I was in company with him, the character of my ship would be recognized. I was, however, separated from him, by his orders, and suffered accordingly.

At the time the news of this transaction reached London, I have been informed that Mr. King was enquired of, what course would be taken relative to this unpleasant business, and that Mr. King replied, nothing could be done, inasmuch as Captain Phillips had no commission. The want of this, you see, was every thing, it was indeed all important to me. If it had been my fortune to have had it, I should have risked the responsibility of the act, and sunk the English boats, in case Loring persisted in taking my men; but having no commission to justify defensive conduct, I was compelled, with reluctance, to submit. Now, my good friend, after reading this long epistle, which I am apprehensive you will find tiresome, I think Mr. Adams will not say, he should have deprived me of my command, without endeavoring to alleviate the wounded feelings of an officer, by re-instating him in a superior command, in some short time after. I am fully persuaded, that if Mr. Adams now filled the Presidential chair of our beloved country, he would not hesitate to do justice to an injured man. I remain, with great respect,

Your obedient servant.

ISAAC PHILLIPS.

Extract of a letter from Doctor Benjamin Waterhouse, to Captain Isaac Phillips, dated Cambridge, 12th September, 1820.

"I write this, merely to say, that directly on receiving your letter, of the 19th August, I wrote such a letter to my venerable friend, Mr. Adams, as I thought proper; but had no answer before to-day. I was a little fearful, lest I had offended him by my freedom; but I find that the contents of your letter had made a deep and rather sorrowful impression on his mind, for he says 'captain Phillips' letter is a volume of news to me. That he sailed without a commission was never known, heard, or suspected by me, and not one word of his conversation with Mr. Stoddert, was ever communicated to me—I will return you his letter, when I have read it more deliberately and reflected upon it more maturely.

"I clearly perceive, that he is filled with regret at what has happened; and I believe, from my knowledge of his love of truth and justice, will try to soothe your feelings; but the *mode* requires deliberate thought, for the Secretary of the Navy is dead, and your letter has called up a volume of ideas to his mind, that we perhaps, knew nothing of."

This letter furnishes matter for serious comment. It is important from more considerations than one. It serves to illucidate many things, which but for this, might, perhaps, appear mysterious and inexplicable. It is always painful to disturb the ashes of the dead. There is something in the attempt, that usually appears invidious, and at which our generous feelings are apt to revolt. No man will do it from choice, yet there are cases where no motives of scrupulous delicacy should prevent a fair and impartial examination of the conduct of men, who are no longer alive to justify themselves. Justice to myself demands it in the present case, and I shall enter upon the task, boldly, fearlessly, and I trust, impartially, with as much candor as the subject demands. My reputation is as dear to me, as another's can be to him. I am surrounded by social ties as tender, and which I cherish as fondly as any man. I have friends and connexions, whose reputation and happiness are as dependant upon me, and who are of as much consequence to the community as the friends and connexions of others, and whom I am bound to shield from reproach. If others may happen to suffer by a just vindication of myself, the fault must rest upon those with whom it originated, and who have driven me to the measure—it lies not at my door.

How then, did it happen, that I was compelled to sail upon this voyage without my commission; after having used every mean in my power to obtain it, without success, and after having procrastinated the period of my sailing to the last moment possible? How did it happen, that every commissioned and warrant officer in my ship, was in the same situation: although that fact was unknown to me till some time after we had been at sea, while the fact that I had not my commission, was entirely unknown

on board my ship. How should it have happened, that the circumstance was never known to the President? •*That he never heard or suspected such a thing?*” •*That my conversation with Mr. Stoddert, after my return, was never communicated to him, or my statement made known*”—although I was *pretendedly* dismissed from the service in his name, for reasons drawn from *this very statement*. Why was I advised by the Secretary not to see the President, and informed that he was perfectly satisfied with my conduct, and at the same time, hurried away to Baltimore for further service, as though all my conduct, was indeed, fully approved, and the confidence of my government unshaken—and then, in two days afterwards, instead of receiving an order, and instructions for service, as I had every reason to expect, why was a naked letter of dismissal from the service sent me, without assigning a single reason for such an extraordinary change of feeling, of purpose and of opinion. This letter was calculated to induce a proud minded man, conscious of having done his duty faithfully, in conformity with his instructions, of having committed no errors, to retire with indignant contempt at conduct, so manifestly unjust, undignified, unfair and capricious.

Why, let me ask, was a letter of a *different character* framed for the purpose, placed upon the records; assigning causes for my dismissal which had no foundation in truth, as though it was necessary to provide for some subsequent contingency which might hereafter happen; assigning causes too, which had the facts been so, might seem to justify the conduct of the government, and while my narrative was withheld from the President, and the peculiar circumstances in which I was placed, were wholly unknown to him, should the conduct of the Secretary afterwards become the subject of remark, or of enquiry, an examination of the records would seem to be correct: especially, as I had not appeared before the President to explain my conduct, and from aught that appears of record, I had yielded a *pliant submission to my fate*, as though I felt conscious that it was merited.

When all these things are considered—when it is taken into view, that it was the duty of the Secretary to have sent me my commission, and to have seen that my officers, crew and vessel, were supplied with every public document which might be required from the government for their protection; to establish our character, and the character of our ship, for the service in which we were engaged, before the vessel went to sea—when the consequences which might result, and actually had resulted from a total neglect of *all these* are considered—that the blame would rest exclusively on the Secretary—that it was such a culpable neglect of his official duties, as could scarcely be palliated, or justified, and that the transaction was likely to become a subject of investigation by the government, the light bursts upon us at once. The motives of the Secretary, which probably led to this strange and unprecedented procedure, are explained in characters, as legible, as though written, **BY THE FINGER OF GOD, WITH A SUN-BEAM.**

I demanded of Mr. Stoddert a trial. But what evidence is there that my demand ever reached the President: that it ever went any farther than the secretary himself? Is it to be presumed, that he who had already discovered so much ingenuity to prevent an interview between us, by which an explanation would inevitably have followed—the whole transaction with commodore Loring have been explained—his own conduct have been exposed, and himself have been rendered responsible for whatever might have ensued—would he have suffered a public investigation of my conduct, in this affair, to have taken place, if within his power to have prevented it? Would he have facilitated a measure, by which the very event he most dreaded, must have been realized? No, it would be spreading the veil of charity something wider than it would reasonably bear, to presume it.

In the letters which follow of the 12th of November, 1820, and the 8th of March, 1821, president Adams again repeats that he "*never knew, heard, or suspected that I*

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sailed without my commission"—"that he has no recollection that he ever gave orders for my dismissal, or consented to it." If the contrary had been true, is it likely he would have forgotten it? The conduct of commodore Loring created, at the time, a national excitement, that was felt throughout the country. It was not considered a trifling matter: The indignity to the American flag was felt—the outrage was loudly complained of, *at least, by one party*. The nation had become involved in the affair, and it is hardly to be presumed, when the president recollected every other circumstance connected with the transaction with so much precision, that he should have forgotten *the most important feature in it*, the one which gave it all its character, and the only one which had cost the American commander his commission. The all important fact too, that I sailed without my commission; *that there was not a paper or document on board my ship, that bore his signature, or proclaimed her national character*, and that he, nevertheless, had made me alone responsible for all the consequences which had followed, and had punished me with such severity, as to dismiss me from the service without a hearing, are circumstances entirely forgotten by him; or rather *he disavows his knowledge of, or participation in, them*. Is it, I say, to be presumed, that if he had ever ordered my dismissal upon *any terms*, that he would have forgotten it? Was it such an every day transaction, or so common to dismiss officers from the service, in this summary way, that my case made no impression among the number? Or was mine the only case which had occurred, and, therefore, most likely to have been remembered? No, he never would have forgotten any of these things, if they had taken place within his knowledge, by his authority, or consent. And the opinion that immediately follows, "*that I never was dismissed,*" shews conclusively what he then thought and still thinks of my case.

Extract of a letter from Doctor Benjamin Waterhouse, to Captain Isaac Phillips, dated Cambridge, 12th November, 1820.

"It is but two days since President Adams, returned to me your letter, of August 19th. I am convinced that it has occasioned him a great

deal of thought, in which regret has predominated; and this, we need not wonder at, when we consider, that he is, that rare character a *conscientious* statesman. He repeats, in strong terms, that he never knew, heard or suspected, that you sailed without a commission. He says, he has no recollection that he ever gave orders, or consented to your dismissal. His words are, "*Indeed I suspect he never was dismissed, and that he is now a captain in the Navy, as much as ever he was. I greatly regret that Phillips did not come to me in person, and explain the whole affair himself. If he had, I am confident he would have had no reason to complain.*"

Same to the same, 8th March, 1821.

"In a conversation, he, (Mr. Adams,) repeated what he had written to me, and I to him. He said, in his opinion, you were still a captain in the Navy of the United States; that he never knew you went to sea without a commission, and never knew the circumstances of the case, and has not the least recollection of ordering your dismissal; he should not were he now President of the United States, consider you otherwise than a captain in the service; but as so long a time has elapsed, and Mr. Stoddert no longer here to answer for himself, he did not see what could now be done."

The preceding letters and statements, afford all the information it is possible to obtain, in any degree essential to an understanding of the subjects to which they relate.

The apparent discrepancy between the statements of Messrs. Trezevant and Timmons, and captain Phillips; the two first, observing that they, "were not on board the *Baltimore*, when she was visited by captain Loring's officers," and the latter stating that he had "consulted Mr. Trezevant before he had permitted any of the crew to be taken from the ship," appears to be reconciled, by the explanation of captain Phillips, who says, that although those gentlemen were not on board the *Baltimore* at the time commodore Loring's officers visited her, yet that Mr. Trezevant arrived on board while they were there, and before any of the crew had been taken from her.

The reader will not fail to observe, that every information with regard to the occurrences between the *Baltimore* and the British squadron, is derived from captain Phillips himself. It was from the information given to them by him, that Messrs. Trezevant and Timmons, wrote their letter to Mr. Morton, of the 18th November; and it was upon his narrative of the occurrences that the Secretary of the Navy dismissed him, and his more recent statement, as to what that narrative was, appears to be confirmed by the recollection of Mr. Adams, as may be seen by referring to Doctor Waterhouse's letter of the 5th August, 1820, where he says, "his narrative of the affair corresponded with your own."

If captain Phillips' conduct on this occasion had been such as Mr. Stoddert, no doubt, believed it to be, he ought to have been brought to a court martial, and his dismissal from the service would, unquestionably, have been recommended. It would not have been in his power to have averted such a sentence. If he really had not only "tamely" submitted to the

orders of the British lieutenant, but "obeyed" them, he would, indeed, have merited the *summary* punishment he experienced. But in the facts stated, we cannot discover in any part of the conduct of captain Phillips, either obedience, or tame submission to the British officer. There surely was no tame submission in captain Phillips' taking the muster roll from the hand of the British officer, directing him to walk to the *leeward* side of the quarter-deck, and ordering his crew to quarters; neither can we trace his subsequent reluctant yielding without resistance, to the execution of captain Loring's order, to any base feeling of this sort. Commanding only a small sloop of war, while commodore Loring had three ships of the line and two frigates, to enforce the execution of his purposes; without a commission or any paper from his government, indicating the national character of his ship; fettered by instructions which enjoined him, on no account to molest the vessels of any nation, except those of France; his situation was highly embarrassing.

His instructions were not, it appears, construed as they were intended. Correctly interpreted, they meant that he should not act *offensively* against the vessels of any nation, excepting France. They did not forbid his acting *defensively*. Under the circumstances of the case, it would probably have been better for captain Phillips, first to have discharged his broadside at the British squadron, and then struck his colors. It should be a point of honor with a national vessel of war, not to strike her colors with guns loaded, if she has an opportunity of discharging them. The circumstances which justify her striking her colors, will generally admit the previous charge of her guns. But, although this course would probably have been more approved than any other on the part of captain Phillips, situated as he was, it does not appear to us that his conduct deserved severe censure, still less, we conceive, did he merit the summary punishment inflicted upon him.

The power of dismissing a navy officer, without trial, is undoubtedly possessed by the Executive; the necessity of such a power being lodged in some one of the departments of the government, is at once conceded; but it is contended, and we think very justly, that this power should never be exercised without great caution, and positive information that the offence requiring its exercise has actually been committed. If a court martial had have been allowed to captain Phillips, there is every reason to believe that he would have been acquitted, and that another officer would have been convicted of the offence charged upon him, and for which he was punished.

The comments of the editor of the Naval Chronicle breathe a spirit of candor which certainly do him credit as an historian. It is fair to put the best construction upon the conduct of a man, that the facts will bear, and whatever may have been the conduct of Mr. Stoddert in rela-

tion to me, the editor of the Chronicle had no reason, in publishing mere matters which appear of record, to impugn his motives, and hold him up to future ages as a mark for public censure. It was fair, therefore, extremely fair, and charitable too, for the editor to suppose, that Mr. Stoddert acted, in my case, from pure motives. He had no reason, I suppose, to imagine that any management had been resorted to in producing my dismissal from the service. Presuming, therefore, that the documents found upon record were genuine, he could hardly believe otherwise than that Mr. Stoddert acted from proper motives, but under wrong impressions, and from wrong information. But such are not the facts. Mr. Stoddert was correctly informed upon every point in this case, and those who believe that he was, will draw different conclusions from the editor. But why, let me ask, if I had conducted myself in this affair with commodore Loring as Mr. Stoddert asserted, and seemed to imagine, and would certainly have the world believe I had, should I have been brought to a "court martial," if the secretary, or even the president of the United States possessed the power, legally to dismiss me without a trial? The very suggestion implies a doubt of the existence of such a power in the president, although in another part of the same article, it is admitted. How far this admission is correct shall hereafter be tested. The editor admits that the president possesses this power, not because it is delegated to him, either in express terms, or by necessary implication, but because he thinks such a power should be vested some where. What necessity is there, let me ask, for the infliction of such a summary mode of punishment upon a naval or military officer, any more than there is for the execution of a robber of the mail, who had murdered the carrier, for example, in the commission of the offence, without a trial? Because the president is compelled to sign the warrant for his execution, after a conviction in due course of law, does it therefore follow, that he may order him to be executed without a trial? Because a man may, in the opinion of the Pre-

sident, deserve punishment, does it therefore follow, that he has power to inflict it, without a trial by his peers? The necessity is no greater in one case than it is in the other, and the law has equally provided for a fair and impartial trial in both, although by different tribunals. If this power is to be derived and exercised, *ex necessitate rei*, the reason fails altogether—if from provision of law, such provision, it is believed, is no where to be found—if from analogy, it is equally fatal to its pretensions—but if from neither of these, then the conclusion is irresistible, that its exercise is an assumption of power, neither sanctioned by analogy, necessity or law. But more upon this subject hereafter.

From what authority the editor of the Chronicle asserts, that it appears my instructions “*were not construed as intended,*” is difficult to determine.

He has not given us an authentic copy of these instructions, and the world is left entirely in the dark in regard to their obvious meaning. “*Correctly interpreted,*” he says, “*they meant I should not act offensively against the vessels of any nation, excepting France:*” by which I suppose he means, *interpreted as their author intended.* But is that the obvious and plain construction; the common sense and import of the language—the meaning that every intelligent man of common capacity and information will put upon them? For unless we have better examples of force and simplicity of style, and grammatical purity of language, than have frequently been exhibited, even from the navy department of our government, it will not be concluded, I presume, that because a document or order originates there, that it therefore, contains *conclusive* evidence of expressing the author’s meaning, even if he had one in view; or of being intelligible, or capable of but one fair and obvious interpretation. It is no uncommon thing, even in these enlightened days, to see a document, emanating from high authority, shrouded in such a mantle of ambiguous verbage, or so *vastly profound*, as to mean any thing, at the option of the reader, at least, if not of the

writer. Whether these instructions were construed agreeably to their obvious meaning, or not, will appear from their examination.

Having disposed of that portion of the Naval Chronicle, exclusively applicable to my case, I will proceed to lay before the public, such further evidence relating to this singular affair, as I have been able to obtain. On the 9th of July, 1821, I addressed the following letter to the honorable Smith Thompson, then secretary of the navy.

Copy of a letter from Capt. Phillips, to the Hon. Smith Thompson, Secretary of the Navy.

WASHINGTON, 9th July, 1821.

SIR:—Availing myself of your polite offer, made personally to me, I have to request, that you will be pleased to direct the following papers, or copies thereof, to be forwarded to me.

1st. My appointment as Captain in the Navy of the United States.

2d. My orders to take command of the Sloop of War, the Baltimore.

3d. The date of my commission, and of the letters transmitting it to me; if any such were issued or written; also my letter, if any, acknowledging the receipt thereof.

4th. The sailing and cruising instructions, given to me by the then Secretary of the Navy; and particularly a copy of the letter which was to govern my conduct on meeting with a vessel of war, belonging to a power at peace with the United States, and who might attempt to examine, or make capture of any vessels, under my convoy, &c.

5th. Copy of the Secretary of the Navy's letter to me, immediately after my return to the United States, from my first cruise, if any such was written.

6th. Copy of my communication to the Secretary of the Navy, explanatory of my conduct during the cruise.

7th. Copy of the letter of the Secretary of the Navy to Commodore Truxtun respecting me, and copies of Commodore Truxtun's communications to the Secretary, upon the same subject.

8th. Copy of a letter of the Secretary of the Navy, purporting to be my dismissal from the service.

9th. Copies of any communications that may have passed between the President of the United States and the Secretary of the Navy, in relation to me.

If, from pressure of business, or any other cause, it should be inconvenient to have those papers copied in your office, and you would trust the originals in the hands of my friend, Mr. Goldsborough, he will have them copied for me; but, in that case, I shall still have to request that the copies may be certified in your office, as being correct.

I have the honor to be,

With sentiments of respect,

Your obedient servant,

ISAAC PHILLIPS.

I certify the foregoing to be a true copy of the original, on file in this Department.

CHARLES HAY, Chief Clerk,

Navy Dept. 3d June, 1825.

To the Honourable Smith Thompson, }
Secretary of the Navy, U. S. }

Letter from Smith Thompson, Esq. dated Navy Department, July 12th, 1821.

SIR—Agreeably to the request contained in your letter, dated the 9th inst. I now enclose to you papers marked A. B. C. D. and E. which furnish all the information, relative to the several queries that you proposed, which appear to be in the possession of this Department.

The certified papers now furnished, contain, it is believed, full information on all the points of enquiry, except copies of your own communication to the Department, and that of Captain Truxtun, neither of which is to be found on the files for that period.

As regards your ninth enquiry, requesting “Copies of any communications that may have passed between the President of the United States and the Secretary of the Navy, respecting you,” I have to observe, that there are no records in the Department, shewing what passed between the President and the Secretary, in relation to your dismissal from the Navy of the United States; but, if there had been any, I should have considered the same as strictly confidential, and would not, of course, have deemed it proper to furnish you any information on the subject.

I am, respectfully, your obdt. servt.

SMITH THOMPSON.

Isaac Phillips, Esq. Baltimore.

Extract from the Register of the Navy Department.

Isaac Phillips, Captain, was appointed to the command of the U. S. ship *Baltimore*, July 3d, 1798; accepted the appointment July 9th, 1798—his Commission dated July 3d, 1798, was sent to him on the 9th July, 1798—he *not having received that Commission*, a new one, of the same date, was delivered to him *January 9th*, 1799.—He was dismissed from the service of the United States, *January 10th*, 1799, and, by the records of letters received, he returned his Commission to the Navy Department, February 5th, 1799.

I certify that the above Extract is in conformity to the entries made in Register A. of the Navy Department.

JOHN BOYLE, C. N. Dep'tmt.

Navy Department, July 12th, 1821.

The following record of my sailing instructions, deserves to be seriously considered. I am first directed to proceed to Hampton Roads, and thence sail in company with, *and under the orders of captain Truxtun*: a circumstance I shall have occasion hereafter to notice when I come to an examination of the report of the secretary of the navy upon my case. That portion of my instructions, where I am directed, among other things, "*on no account to molest the vessels of any nation, but France, cannot pass unnoticed. To enforce the observance of this instruction, a case is put; that, 'should I even see an American vessel captured, I am not to interfere,' but leave the affair to be settled by the two governments.*"

Cruising Instructions to Capt. Isaac Phillips, commanding U. S. ship Baltimore, 9th August, 1798.

NAVY DEPARTMENT, 9th August, 1798.

SIR—Presuming that your ship, the *Baltimore*, must be now ready for sea, it is necessary that I should instruct you as to your future destination, in the service of the United States.

Immediately upon your receipt of this letter, or as soon after as possible, you are to proceed with the ship under your command, to Hampton Roads, *where I expect you will meet with the Frigate Constellation, Captain Thomas Truxtun, in company with whom, and under whose orders you are to cruise.* Should you not find him at that place, you are to proceed to sea in search of him, and there is little doubt you will fall in with him between the Capes of Virginia and Charleston, on which station he has been cruising for some time.

It is hardly necessary to remind you of the importance of discipline and good order on board of ships of war; and in our infant Navy particularly,

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early attention should be given, to introduce them to as high a degree as possible. Good examples on the part of the officers, will naturally lead to these points with the men.

You will receive herein, an Act of Congress, passed the 9th day of July last, authorizing the capture of the armed vessels of the French Republic; also the instructions of the President, founded on that act. *The vessels of every other nation, are on no account to be molested, and I wish particularly to impress on your mind, that should you even see an American vessel, captured by the armed ship of any nation at war, with whom we are at peace, you cannot lawfully interfere to prevent the capture; for it is to be taken for granted, that such nation will compensate for such capture, if it should prove to have been illegitimately made.*

It is highly proper that you should inculcate among your officers and crew, a high respect for the government to which they belong, and, on no account, permit them to follow the example of some unprincipled Americans, who, to the dishonour of the name, have not unfrequently indulged themselves, in licentiously villifying their own government, and the best characters in it; to command respect from others, we must respect ourselves. It is time we should establish a National Character, which ought to be a love of our country, and jealousy of its honor; and, amongst seamen particularly, a veneration for our Flag.

When you join Capt. Truxtun, it is intended that you both proceed, without delay, to the Havana, there to take under convoy a number of American vessels, who are afraid to venture home unprotected, and are waiting for your arrival. Despatch is necessary, and should you not have completed your full complement of men at Baltimore, I should suppose it might be as well to proceed to Hampton Roads, with what you have, and obtain the rest at Norfolk.

I sincerely wish you a successful cruise, and by the time you return on this coast, arrangements will be taken for your further employment.

I have the honor, &c.

BENJ. STODDERT.

I certify that the preceding is faithfully transcribed from the Records of the Navy Department.

JOHN BOYLE, C. N. Dep't.

Navy Department, July 12th, 1821.

Captain Isaac Phillips.

From these instructions, fellow citizens, what but tame submission could the government have expected from her navy? She could spread her bunting, but it would not be regarded. She could sail in company with fleets of merchantmen, but she could not afford them protection, though captured within reach of her guns. It is difficult to conceive how our navy could be more disgraced, than by bearing such instructions. With the arrogant spirit which at

this time prevailed in the British navy, and which had become so, by repeated successes; with a feeling bordering upon contempt for the infant navy of America, and a deep and settled hostility to our government, what more humiliating situation could an American officer be placed in, than to be *manacled by a set of instructions like these*, with every thing about him to prove the character of his ship, and what is worse, feel himself responsible for indignities offered to his flag.

How much more humiliating must have been my situation, *without a single document* to prove the character I was obliged to sustain. Are there any thing in these instructions capable of being misunderstood? Was there any thing left to my discretion? In regard to my conduct, if my own ship should happen to be attacked, I had no instructions whatever. How then could I have *misconstrued* them in relation to this affair? I was left to act as my judgment directed me. How then could I have *misapprehended my instructions*, and rendered myself amenable for not observing them? The residuary clause of this record of imbecility, while it inculcates cowardice by every word, yet lays the foundation for my dismissal from the service upon a false charge of "*tame submission*," to the indignity offered my flag. It is believed, there is not an officer in our Navy, at this day, who would consent to hold his commission, if compelled to yield observance to *such instructions*.

The next document in order, is the following extract of a letter from Mr. Secretary Stoddert to Captain Thomas Truxtun. This letter appears of record too, and reiterates the same charges which are contained in my letter of dismissal, with some new shades of coloring—and an additional charge of *having written letters advising the officers of the Baltimore to resign their commissions*. These charges, so often repeated, although entirely of his own creation, shew a determination to make others believe them, if possible, whether founded on fact or not. No mistaken zeal, no misconception, no degree of stupidity, could ever have led the Secretary into such an error, or have furnished

him with an apology for assertions, falsified by every statement of the transaction which had been made.

Extract of a letter from the Secretary of the Navy to Captain Thomas Truxtun, commanding the U. S. Frigate Constellation, dated Feb'y. 6, 1799.

"The Baltimore has been delayed by the resignation of officers in consequence of the dismissal of Phillips, who was not dismissed because the British took his men, *but because he was active in submission. He never should have descended so low as to call all hands, because he was ordered to do it by a British Lieutenant, on board of his own ship.* You have his narrative, and are capable of judging on this subject. The power of dismissal without trial, resides in the President;—but it is a power not to be exercised, except on extraordinary occasions. Phillips has lowered himself more in my estimation, by causing, *as I suppose he did,* letters to be written from Baltimore, by the friends of the officers, urging them to resign."

I certify that the above Extract is faithfully transcribed from the Records of the Navy Department; and that it contains all of the letter to Captain Truxtun which has relation to Captain Phillips.

JOHN BOYLE, Clerk Navy Dep't.

Navy Department, July 12th, 1821.

To close the correspondence with Mr. Stoddert, the following letter from him to me, dated February the 20th, 1799, and certified by the Navy Department, is a document that deserves considerable notice. It explains, for what causes, according to Mr. Stoddert's account, I was dismissed from the service. It is important in another point of view, also, for it shews that the very charges, on which he relies to justify my dismissal, had no foundation whatever.

Letter to Captain Phillips relating to his conduct in permitting his men to be mustered by a British officer, &c.

NAVY DEPARTMENT, 20th Feb'y. 1799.

SIR—I have received your letter of the 11th, which I will lay before the President in a few days, when he will have leisure to attend to the subject of it.

In the mean time, I think it necessary to observe, that you never received any letter or instruction from me, as you state, "*to keep good terms with the British, by every act of conciliation.*" A friend of yours, in a letter to Col. Howard, has gone still further with this mistake, and calls such letters from me, private letters. It is indifferent to me for what use such things are intended. *You were instructed not to molest the vessels of any nation with whom we were at peace; not even to interpose to prevent the capture*

of our own merchant vessels by the armed ships of any nation except the French. Such were, and such still are our laws:—we arm only against the armed vessels of France;—against the armed vessels of other powers, ours have no right to act, except to repel insult, or injury offered to themselves — It was your duty, therefore, not to attempt to defend against the British ships of war, the vessels under your convoy. But it was not your duty to obey the order of the British Lieutenant, to hoist your signal to stop your convoy; and by so doing assist to throw these vessels into the power of the British ships.

But for this undue obedience on your part, the vessels might have got into the Havana. Though you had no right to protect them, except against the French, it did not follow that it would be proper to aid their capture by the British. The Congress have not deemed it the interest of the United States to prohibit the public ships from conveying for the purpose of protection against the French vessels with contraband goods.—*Our flag, then, is not evidence of the fairness of the trade of the vessels conveyed—nor can we lawfully protect such vessels from the operation of the law of nations. I make this explanation as well for the gentlemen with whom you communicate, as yourself. As to your men, it would have been most satisfactory, if you had not parted with them, without striking your flag, and giving up your vessel also. But if you had been only passive, the unprecedented situation to which you were exposed, would have been considered a sufficient excuse: but unfortunately, you suffered yourself to be made instrumental in assisting the outrage on the American Flag, by obeying the order of the British officer to call all hands, and in furnishing a list of their names. This, it was conceived, you never should have done, whatever might have been the consequences of your refusal.*

I have thus stated the *only two points*, which I confess I could not, in forming my opinion to lay before the President, get over. As to your correspondence with Loring, that had no weight in influencing the measure of which you complain.

On the subject of the principal point of your defence, having no commission; I can neither confirm nor contradict the fact. It appears by a record in the hand writing of the Clerk, whose duty it was to transmit commissions, that yours was sent the 9th of July; this Clerk, Mr. Josiah Fox, left the office in October, and has not been in it since; his place of residence is Norfolk. I must confess, however, that it appears not a little extraordinary, that with the impressions stated in your letter, on your mind, you should have gone to sea without a Commission, and without once complaining in any letter to me, of the want of one; and it is difficult to conceive what service, with such impressions, you expected to perform. It is extraordinary, too, that in your narrative of the transaction with Loring, this circumstance, which you now think so important, not only as it affected your conduct, but his also, should be so totally omitted:—especially, too, as you must have supposed, that however little your own conduct stood in need of vindication, that of Loring would probably lead to serious discussion between his country and your own; and under that supposition, it seems natural to conclude, that you would have felt it a

sacred duty, as it certainly was, to represent his conduct just to your government, and to conceal no circumstance which might tend to mitigate its enormity.

It affords me no pleasure to have it in my power to make these very obvious remarks. I am, Sir, &c.

BENJ. STODDERT.

Faithfully transcribed from the Records of the Navy Department.

JOHN BOYLE, C. N. Dep't.

Navy Dep't. July 12th, 1821.

Captain Isaac Phillips.

Comment upon this letter is scarcely necessary. Here I am again reminded of my instructions, and again told that "*it was not my duty to attempt to defend the convoy under my protection against the British ships of war.*" And yet, *even here* I am indirectly charged, with having stopped my convoy, and of throwing them into the power of the British ships, by being reminded of what *was not* my duty. This insinuation breathes the essence of malice itself, for it was a well known fact, that by my precaution, all the convoy got safely into port, but three, which were detained for a short time, and were then released and arrived in port without having sustained any injury whatever. With what justice or truth, then, could the Secretary have intimated that I had thrown my convoy into the power of the British ships?

How the people of this country will be pleased with the avowal here made, "*that our flag is not evidence of the fairness of the trade of the vessels convoyed,*" remains to be seen. England, in the plenitude of her arrogance, when insisting upon her right of search, never demanded more, than is here conceded to her. And although I am not censured for giving up my men, yet I am reminded that it would have been *more satisfactory*, if I had struck my flag and given up my ship. If the Secretary had given my narrative, and the other evidence which he had before him, *the careful perusal* he mentions in his letter of dismissal, recorded in the Chronicle, he would have seen that I did the very thing he says would have been so satisfactory: *that I did strike my flag and give up my ship.* Surely then,

this could have furnished no cause for complaint; no ground for my dismissal from the service. Mr. Stoddert admits that my situation was *unprecedented*, yet he again reiterates the unauthorized charge, “*that I assisted the outrage upon the American flag, by obeying the orders of the British officer, to call all hands, and in giving him a list of their names.*” These, Mr. Stoddert says, are the *only two points he could not get over*: assisting the British to capture my convoy, and submitting to the orders of the British officer, in calling all hands and in giving him a list of their names—consequently, every other part of my conduct was satisfactory, or at least, according to his notions, excusable. These, then, were the *only two causes* for which I was so unceremoniously dismissed. The first point he well knew was *not true*, for none of my convoy were captured. The second, he must have known was *equally untrue*, for I was not on board when the hands were called and the list of their names was put into the hands of the British officer. These things were done in my absence, by my first Lieutenant, who was Mr. Stoddert’s kinsman, and who was alone responsible for these acts, if they were improper.—But he was never censured, or called to account in any way, but after my dismissal, was ordered to the command of my ship. Mr. Stoddert must have known all these facts when he gave me my commission; when he wrote my letter of dismissal, the day after; when he wrote to Captain Truxtun, on the 6th of February, 1799; and when he penned this letter to me, and that neither of the charges he has so frequently made were true.

Mr. Stoddert strongly insinuates, in this letter, that I never had mentioned to him, that I had not received my commission, and that he entertained some doubt upon the subject, whether it was sent or not. For he says, it is *extraordinary* that I did not mention to him, I *had not* received my commission, and that in my narrative, no mention is made of it. This letter, it will be perceived, is dated in February, 1799, and will it be believed by any rational man, that Mr. Stoddert could have forgotten that on the

9th day of January, in the same year, not one month before, that he had himself given me a new commission?—Would he have done this if he had not then known, that I had none before? And yet, he says that I did not mention to him, that I *had not received* my commission. If I did not, how came he by a knowledge of the fact? Either he must have *remembered* that he had *neglected his duty*; that I sailed without it, or he must have derived his knowledge of the fact from me. That he knew it was so, is evidenced by his giving me another. With what propriety; with what appearance of truth then, does he state in this letter, that I had not mentioned a circumstance to him, “*which I deemed so important?*” It is accounted for in one way—this letter, like the letter of dismissal published in the *Chronicle*, was prepared for the *records* of the department, rather than for a scrupulous statement of facts. It is painful to criminate any man; but the greatest exercise of charity, cannot reconcile discrepancies, such as are witnessed throughout in the language and conduct, of this gentleman.

Having thus far laid before you the facts of this case, I will now proceed, agreeably to my promise, to furnish the evidence in support of my assertion, *that the letter of dismissal, published in the Naval Chronicle, is a different one from the letter I received from Mr. Stoddert.*

Certificate of Capt. I. Phillips.

I certify on the honor of a gentleman and officer, that the letter, as published in the *Naval Chronicle*, purporting to be my letter of dismissal from the Naval service of the United States, differs essentially from the one received by me, from Benjamin Stoddert, Secretary of the Navy: that letter did not consist of more than three lines, on common letter paper, and contained no censure on my conduct, nor was any reason assigned in it for my dismissal.

And I do most positively deny the charges contained in Mr. Stoddert's letter to Capt. Truxtun, dated 6th February, 1799, and numbered 4, or that I ever wrote any of

the letters *which he supposes*, in that letter, I did write. But, on the contrary, I urged the officers to remain in the service.

To these declarations, I am ready to qualify at any time and in any manner it may be deemed necessary.

ISAAC PHILLIPS.

The above I certify to be a true copy of the original, on file in this Department.

CHARLES HAY, Chief Clerk.

Navy Department, 3d June, 1825.

City of Baltimore, ss:

Be it remembered, That on this 17th day of September, 1825, Captain I. Phillips personally appeared before me, the subscriber, one of the Justices of the Peace for said city, and made oath on the HOLY EVANGELS OF ALMIGHTY GOD, that the matters and things contained in the foregoing Certificate, are true, as therein set forth, to the best of his knowledge and belief.

Sworn and subscribed before me,

JOHN MOORE, Justice Peace.

In confirmation of my statement, the affidavit of David Winchester, Esq. is also submitted. The high standing of Mr. Winchester; his character for integrity and honor; the estimation in which he is held in society, render all comment upon his statement unnecessary. Wherever he is known, his testimony will carry conviction; and I hazard nothing in saying, that for truth and veracity, he does not suffer by a comparison with any man.

Letters from D. Winchester, Esq. to Isaac Phillips, 13th March 1824, relative to Mr. Stoddert's letter of dismissal.

BALTIMORE, 13th March, 1824.

Captain ISAAC PHILLIPS—

DEAR SIR—I have received your letter of the 11th current, requesting me to state my recollection of the contents of Mr. Secretary Stoddert's letter, dismissing you from the Naval service of the U. States, in consequence of the affair with Commodore Loring. My recollection of the letter in question is, that it was very laconic, containing *not more than two or three lines*, and stating, in substance, that the U. States had no further

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occasion for your services, *without assigning any reason whatever*. On reading the letter published in the Naval Chronicle, it immediately occurred to me, that it was not the same you had shewn me, at the time.

I am, very respectfully, Dear Sir,

Your mo't. ob't. serv't.

D. WINCHESTER.

Second Letter from David Winchester, Esq. respecting Mr. Stoddert's letter of dismissal, 30th June, 1824.

BALTIMORE, 30th June, 1824.

Captain ISAAC PHILLIPS,

DEAR SIR—On more mature reflection, I am convinced, that the statement contained in my letter of the 13th March last, of the substance of Mr. Stoddert's letter dismissing you from the Naval service of the United States is correct. I do not pretend, after a lapse of more than twenty-five years, to quote from memory, the precise phraseology of the letter, but as regards its matter and manner, I feel great confidence that I am not mistaken.

My acquaintance with, and respect for you, the interest I took in the administration of the general government at that period, whose popularity I feared might suffer by an act, that appeared to me to be arbitrary, were circumstances calculated to fix in my memory the transaction.

With great regard, I am, dear sir,

Your most obedient servant,

D. WINCHESTER.

David Winchester, Esq. the writer of the foregoing letter, has been known by me for the last thirty-five years, and has ever been justly considered as one of our most intelligent and respectable citizens, whose character for honor, truth, and integrity and high mindedness, is surpassed by no one.

EDW'D. JOHNSON, Mayor of the City of Baltimore.

City of Baltimore, ss:

BE IT REMEMBERED, That on this seventeenth day of September, 1825, David Winchester, Esq. personally appeared before me the subscriber, one of the Justices of the Peace for said city, and made oath on the HOLY EVANGELS OF ALMIGHTY GOD, that the matters and things stated in the foregoing letters of the 13th of March, and 30th of June, 1824, are true to the best of his knowledge and belief.

WM. CLEMM, Jus. Peace.

Letter from Mrs. Elizabeth Phillips, respecting Mr. Stoddert's letter of dismissal, 27th July, 1824.

BALTIMORE, 27th July, 1824.

Captain ISAAC PHILLIPS—

DEAR SIR—Having understood that you intend to apply to the President of the United States, for your rank in the Naval service, I beg leave to state a fact, which is now fresh in my memory, with regard to the letter

of dismissal received by you, from Secretary Stoddert. Being, at the time, a resident in the house with you, and on terms of intimacy with your Lady, I was shewn the letter of Mr. Stoddert, and have a perfect recollection, that it was unusually laconic, not containing more than *three lines* on paper of similar size with this sheet, and that it assigned *no cause* for your dismissal, *nor did it contain any charge of misconduct*, on your part.

My reason for writing this letter is, because I am satisfied that the letter, as published in the Naval Chronicle, purporting to be your letter of dismissal, differs essentially from that received by you in 1798, and perused by me, immediately after its receipt.—To the foregoing particulars, I am ready to qualify, should they be of any service to you, whenever it may be required.

Being confined to bed, with a fractured limb, I have procured a friend to write this letter.

I am, with much respect, your friend,

ELIZABETH PHILLIPS.

City of Baltimore, ss:

Be it remembered, That on this 17th day of September, 1825, Mrs. Elizabeth Phillips personally appeared before me, the subscriber, one of the Justices of the Peace for the said city, and made oath on the HOLY EVANGELS OF ALMIGHTY GOD, that the matters and things contained in the foregoing Certificate, are true, to the best of her knowledge and belief.

Sworn and subscribed before me, the day and year aforesaid.

JOHN MOORE.

Connected with this branch of my subject, and to aid my application to the President, to be restored to my rank in the Navy, the following letters were politely handed to me.

Letters from Robert Oliver, and William Patterson, Esquires, to the President of the United States.

BALTIMORE, 3d June, 1824.

SIR—Captain I. Phillips, who will have the honor of presenting this letter to you, is under the impression, that he was not regularly dismissed from our Navy, and that he is still in the service. He will explain his view of this subject, and it is only necessary for me to add, that he is a worthy man, and very much respected in this city.

I am very respectfully, sir,

Your most obedient servant,

ROBERT OLIVER.

In addition to the foregoing letter from my friend and neighbour Robert Oliver, Esq'r. I beg leave to observe, that Mr. Oliver and myself were two of a committee appointed to purchase and fit out two sloops of war at Baltimore, in the year 1798, for the service of the United States, that we were instrumental in having Captain Phillips appointed to the command of one of the said vessels, believing that he was well qualified

for that situation. I know not on what grounds Captain Phillips was dismissed from the public service, but I have known him ever since as a respectable citizen of Baltimore, and have transacted business with him almost constantly and to a large amount, very much to my satisfaction.

WM. PATTERSON.

Baltimore, 4th June, 1814.

Certificate from the Merchants of Charleston, S. C.

We, the undersigned, resident Merchants in the City of Charleston, South Carolina, do hereby certify, that in the year 1798, an application was made for some of the vessels of war of the United States, to call off the Bar of this city, and to take such Merchant Vessels under convoy, as traded to Havana, in consequence of the numerous privateers, that captured our vessels, and property, under the flag, and pretended flag of the republic of France.

That in consequence of such application, the Baltimore sloop of war, commanded by Isaac Phillips, Esquire, was sent into this port on the 20th day of October, 1798, who took a fleet of Merchantmen under convoy, and proceeded with them for the port of Havana, and we have not any hesitation in adding, that we believe Captain Phillips paid strict attention, and protected the said fleet, so far as his force permitted.

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|------------------|-----------------|
| A. TUMROE, | SIMON MAGWOOD, |
| THOMAS MORRIS, | D. CROCKER, |
| JOSEPH WINTHROP, | JNO. ROBERTSON, |
| JN. HASLETT, | HENRY O. HAVRE, |
| THOMAS OGIER, | W. TIMMONS. |

Charleston, South Carolina, June 10th, 1824.

Letter from William Timmons to Captain Phillips.

CHARLESTON, JUNE 18, 1824.

ISAAC PHILLIPS, Esq'r.

DEAR SIR—Your letter of 5th May, addressed to Lewis Trezevant and myself, has been duly received, with the papers which accompanied it.

That gentleman has been dead many years; and of course the charge of a reply devolves upon me alone. And first, with regard to your not having received any communication from either of us after your dismissal from the Navy, I can for myself declare, that if I had conceived that any thing I could have said or done at the time, would have been of the remotest service, either in alleviating your feelings on the occasion, or serving your cause, I would most cheerfully have come forward. Your urbanity and attention to me personally, whilst I was on board the Baltimore, for the greater part of the passage, (the brig Norfolk having proved leaky,) would have demanded this, in common gratitude. I could but have expressed, however, the regret which I felt, in common with your other friends, at the abrupt and informal manner of your dismissal, even without a hearing! This sentiment remains unabated to the present day—

and happy indeed shall I be at this late period, if any document, that I am able to procure, shall be useful in throwing light upon the subject, or shall contribute to place your conduct upon the foundation of its true merits

You will recollect, however, sir, that, I was not on board your ship when the offensive conduct on the part of Commodore Loring took place. Mr. Trezevant and myself had previously gone on board the brig *Norfolk* for the greater convenience of landing, and when we returned to your ship, which we did on the afternoon of the same day that you fell in with the British squadron—the brig *Norfolk*, Captain Butler, in which we were originally passengers, having been ordered for Jamaica by the commanding officer—the outrage had been committed, of course I could say nothing from my own observation, or personal knowledge. I am willing to attest, (and have always spoken of them in the high terms they deserved) to the zeal, ability and officer-like conduct displayed by you during the passage, in affording protection to the merchant vessels under your convoy.

The expression of my opinion as to the character of the affair, will probably be of no service; and yet I cannot forbear saying, that judging from the information I obtained at the time I returned to the Baltimore, and upon which I placed the most firm reliance, I then thought, and do now think, that the conduct of Commodore Loring was marked by that deception, artifice, and disingenuousness, which are infinitely beneath the character of an officer and a gentleman.

At the time you entered the cabin of the *Carnatic*, I understood that two American Captains were present, viz: Captain Baas of the —, and Captain Fuller, of the brig *Friendship*—the first named person is dead, but Captain Fuller survives—and he has made a statement, which you will receive with this, and which I trust may not be thought unimportant.—I have also procured from some respectable merchants of this city, who were in business at the time, and some of whom had property on board the fleet—a certificate, shewing your devotedness to the interests of our commerce. These are the only documents that I can think of at present, as being likely to be useful to you, or to throw light upon the narrative. Subjoined are a few remarks, which appear to me to be necessary to reconcile some apparent contradictions between the joint letter of Mr. Trezevant and myself, addressed to Mr. Morton, our then Consul at Havana, and the narrative, as published in the *Naval Chronicle*, a copy of which is contained in the newspaper you sent me. All which is respectfully submitted by,

Dear, sir, with great respect and esteem,

Your obedient humble servant,

W. TIMMONS.

REMARKS.—From the great length of time which has elapsed since the outrage was committed, it is not to be wondered at, that some errors have crept into the narrative, particularly when we recollect that Captain Phillips' memory has been unassisted by any written document. With re-

spect to the consultation which Captain P. had with Mr. Trezevant, *this was held after the wrong had been done by the British Commodore*; upon Messrs. Trezevant and Timmons' return to the Baltimore; and the consultation was had not on the conduct to be pursued in consequence of the *first procedure of Commodore Loring*, but in consequence of a note, which Captain P. subsequently received from him, demanding that all *British seamen* on board the Baltimore should be delivered up to him—it was upon the contents of this note that Mr. Trezevant was consulted. Mr. Timmons copied Captain Phillips' answer to this note, at his request. He cannot now remember the particular contents—he recollects, however, that they were to the following effect—"that he, Captain P. did not, nor "could not know any British seamen on board the Baltimore, the flag of "the United States being a sufficient protection to all on board; but that "having already struck his flag to a superior force, he should make no op- "position, but should not fail to represent the whole affair to his govern- "ment in its true colors!"—Upon receiving this answer the British squadron made sail and disappeared.

W. T.

Certificate of Captain Fuller, in relation to the occurrence off Havana, dated Charleston, 18th June, 1824.

SOUTH CAROLINA—CITY OF CHARLESTON.

Before me, R. Heriot, Notary Public and Justice of the Quorum, residing and practising in the City of Charleston aforesaid, personally came and appeared Captain Oliver Fuller, who being by me duly sworn upon the Holy Evangelist of Almighty God, did depose and say—

That he commanded the American brig Friendship, in the year 1798; one of the vessels which sailed from this port of Charleston, under convoy of the United States' Frigate Constitution, ——— Nicholson, Esq. commander; and the Sloop of War Baltimore, commanded by Isaac Phillips, Esq. bound to Havana—That after being out some days, the Frigate Constitution, bore away to the N. E. leaving the fleet under the sole convoy of the Sloop Baltimore.

That when they arrived off the port of Havana, they fell in with a British squadron, under the command of Commodore Loring, by which some of the American merchantmen were cut off, and this deponent's brig amongst others.—That he, this deponent, was ordered on board the Commodore's ship, (the Carnatic 74) with his papers.—That whilst he was in the cabin, with Commodore Loring, Captain Phillips came in, (having been invited, as this deponent understood, on board the Carnatic, by Commodore Loring) when some desultory conversation took place, the particulars of which, this deponent does not now remember; but he does perfectly recollect, that a person appeared at the door of the cabin, and mentioned, loud enough for this deponent to hear, "*that the boats had returned.*"—Upon which, that Captain Phillips started up, with displeasure in his countenance and manner, took up his hat, and made his way to the deck. That in a short time, this deponent followed, and then observed boats along-side the Carnatic, which he had afterwards good reason to be-

lieve, had just brought some of the crew of the Baltimore, to the said British ship, whilst *Captain Phillips* was in the cabin, with *Commodore Loring*, as before stated.—That previous to this deponent's going upon deck, *Captain Phillips* had returned to his own ship, and addressed a note to *Commodore Loring*, which the said *Commodore* read to this deponent, in which *Captain Phillips* stated, in the strongest terms, his sense of the outrage that had been committed, charged the said *Commodore Loring* with *duplicity and deception, or words to that effect*, and said, that he would represent the facts to his Government.

That he, this deponent, viewed the transaction as a premeditated plan on the part of the said *Commodore Loring*, by first *inviting Captain Phillips on board the Carmatic*, and, *taking advantage of his absence from the Baltimore*, by authorizing an act, which, in this deponent's opinion, was derogatory to, and inconsistent with, the dignity of an officer.

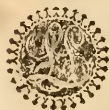
Lastly, this deponent declares, that he has, at various times, been under convoy of Men of War, and that he never saw more zeal or attention paid to Merchant vessels, or better seamanship, than were displayed by *Captain Phillips*, on the passage aforesaid, from Charleston towards Havana.

OLIVER FULLER.

In witness whereof, I, the said Notary Public, and Justice of the Quorum, have hereunto set my hand, and affixed my Notarial Seal, this 18th day of June, 1824, and in the forty eighth year of American Independence.

R. HERIOT,

Not. Pub. & Q. U.



Letter from John Cowper, of Norfolk, to Isaac Phillips.

NORFOLK, 25th July, 1824.

Captain ISAAC PHILLIPS,

DEAR SIR—A short absence from home, has prevented an earlier attention to your letter of the 6th instant, and I have been also disappointed in not finding some letters from the late *Commodore Truxtun*, on which I had made memoranda, of conversations with that officer, relative to your conduct when you commanded the United States sloop of war *Baltimore*, on account of which, it was understood you were deprived of your command, if not dismissed the service.

At the time of the occurrence alluded to, I was upon the most intimate and friendly footing with *Commodore Truxtun*; he spent much of his leisure time at my house, and our conversations were free and unreserved.

I remember at a particular time, he had been reading a newspaper, in which you were treated with harshness and illiberality; the *Commodore* expressed much indignation at the illiberality and abuse of the press, upon this and other occasions. He observed that you were greatly injured and unjustly treated by public opinion, in relation to the circumstance mentioned, and added, that under the circumstances in which you were placed, no officer could have acted with more general propriety, and further added confidentially, (what I had not before known,) that the

blame lay on others, who he did not name, but who I understood; he then informed me, that you had been sent to sea on a cruise, without a commission, conduct which he censured, though in respectful terms.

I would not take upon me, after the great lapse of time which has occurred, to answer for the accuracy of every word I have stated, but for the general accuracy, I speak with confidence.

I well remember, that when you were the subject of conversation, Commodore Truxtun spoke of your qualifications as an officer, in terms highly honorable to you.

I know that there was not an officer in the service, more tenacious of whatever concerned the honor of his country's flag, than Commodore Truxtun. I do think he was the last, that would have vindicated, or found an excuse for submission to any indignity offered to that flag.

I am very respectfully, your obedient servant,

JOHN COWPER.

With such evidence as is here produced, on the 5th day of August, 1824, I made the following application, through the Secretary of the Navy to Mr. Monroe, then President of the United States.

To the President of the United States—

The memorial of the subscriber respectfully represents,

That your memorialist was appointed a Captain in the Navy of the United States, on the 3rd day of July, 1798. That being ordered to the command of the Sloop of War Baltimore, he took charge of that ship, and when ready for sea, received orders from the Navy Department to proceed in her to Hampton Roads, and place himself under the orders of Captain Thomas Truxtun.

That owing to some unaccountable omission in transmitting his Commission which he had not received, your memorialist delayed sailing for two days, in order to communicate the circumstance to the Secretary of the Navy—But your memorialist being informed of the perilous situation of a fleet of merchantmen, (which he, in company with Captain Truxtun, and under his orders, was directed to take under convoy from the Havana to the United States,) was reluctantly induced to accede to the very urgent solicitations of the Committee at Baltimore, to proceed to Hamp-

ton Roads, under a promise that his Commission should be despatched after him, so soon as it should be received from the Navy Department.

That in obedience to his orders, he proceeded to Hampton Roads, joined Capt. Truxtun, and informed him of the predicament in which he stood. Captain Truxtun representing to him, that as he was to cruise in company with him, (Capt. T.) the character of his ship could not be questioned—And that, although it was a subject of regret that he was not in possession of his Commission, yet, by carefully avoiding a separation during the cruise, he apprehended no bad consequences would follow.

That your memorialist, influenced by Captain Truxtun, consented to sail, and accordingly did sail, in obedience to his cruising instructions, and on the return of your memorialist to the Coast of the United States, he was ordered by Captain Truxtun to cruise four days off the bar of Charleston harbour, and then rejoin him in Hampton Roads.

That your memorialist repeated to Captain Truxtun his objections for the want of his Commission, but was again over-ruled, and in accordance with his orders, he cruised off Charleston, for the protection of the merchant service. Towards the close of his cruise, he was fallen in with by the Frigate Constitution. Captain Nicholson, who first requested and subsequently (in consequence of strong objections on the part of your memorialist) ordered your memorialist to accompany him on the same cruise.

That Captain Nicholson having consented to take a fleet of merchant vessels under convoy, from Charleston to Havana, he ordered your memorialist to proceed to Charleston, take in such supplies as his ship required, and join him in convoying the fleet to Havana, that he renewed his objections, on the score of his Commission, but was compelled to submit to the orders of a superior officer.

That, in consequence of a disaster which befel the bowsprit of the Constitution, on the passage to Havana, her commander bore away from the fleet, for a port in the

United States, leaving your memorialist in the unprecedented situation of being in command of a National Ship, in time of *extreme peril*, having under his sole convoy a valuable fleet of merchantment, himself having no commission or any other sufficient document, to prove the national character of his ship.

Thus situated, had your memorialist been influenced by any other feeling than a devotion to what he considered his duty, he probably would have left the fleet, and proceeded to Hampton Roads, in obedience to the orders of Captain Truxtun, but his sense of duty prevailing over, what might have been considered, a safer course of conduct, he continued with the fleet, and protected it to the port of destination, so far as his limited force permitted.

That when your memorialist arrived off the port of Havana, he fell in with a squadron of English Men of War, and an unfortunate occurrence took place, which, on his return, eventuated in his dismissal from the service of the United States. by the then Secretary of the Navy; which dismissal your memorialist understands and insists was unjust and illegal, and without the knowledge or concurrence of the President, and of which circumstance your memorialist, until very lately, has been kept in ignorance.

When your memorialist entered the Naval Service of the United States, and was ordered to take command of the Sloop of War Baltimore, he was influenced by no pecuniary motive, but was appointed a Captain without any application of his own, and received and accepted the appointment, under the impression that his services would be useful to his country, and honourable to himself.

Your memorialist humbly conceives that the evidence contained in the documents and papers, numbered 1 to 12, which he has the honor to transmit herewith, amply prove the injustice and illegality of his dismissal, without even a trial, or a Court of Enquiry, which was demanded and refused, and that he is, therefore, as he humbly conceives, still lawfully entitled to his rank in the Navy of the United States.

He therefore prays your Excellency to take his case into consideration, and to restore him to his rank in the Navy of the United States, and order him to be furnished with a new Commission, bearing date in conformity with his appointment, above stated.

All which is respectfully submitted, by,

Sir, your most obedient and
very humble Servant.

Baltimore, 5th August, 1824. ISAAC PHILLIPS.

To the President of the United States.

SIR—

You will please, after examining my case, as published in the Naval Chronicle, do me the favor to put the following questions to Charles W. Goldsborough, Esq.

1st. Have you any recollection of having seen the narrative delivered by me to Mr. Secretary Stoddert, respecting the affair between the British Squadron, under Commodore Loring, and the U. S. Sloop of War the Baltimore, under my command?

2nd. If you read that narrative, do you recollect my having urged that I had no commission prior to my sailing in the Baltimore—that I had no Commission at the time the affair referred to took place?

3rd. Did I not, while in Philadelphia, say to the Secretary of the Navy, that if he or the President was not perfectly satisfied with my conduct, as explained in the narrative, I desired an opportunity of being heard by a Court, or, being there myself, was ready to give explanation that might be required?

4th. From the narrative, on whom did it appear that blame attached—was the officer really censurable, from the facts stated, dismissed, or in any way punished; and was not the same officer a relation to the Secretary of the Navy?

5th. Was not the command of the sloop Baltimore given to that officer, immediately after my dismissal from the Navy, by Mr. Stoddert?

6th. Did you ever hear Commodore Truxtun speak of

my dismissal; and if so, what did he appear to think of it, and what opinions did he express in relation to it?

7th. What was my general character as an officer in the Navy, with those who knew me best?

I have the honor to remain,

With great respect,

Your obed't serv't.

ISAAC PHILLIPS.

Washington, 9th April, 1825.

WASHINGTON, 12th April, 1825.

SIR—With respect to the queries which Capt. Phillips, in his letter to the President of the United States, of the 9th inst. has requested should be propounded to me, I have to make the following replies, from my best recollection, after a lapse of so many years.

1st. I have a distinct recollection of having seen and read, repeatedly, the narrative delivered by Capt. Phillips to Mr. Secretary Stoddert, respecting the affair between the United States Sloop of War the Baltimore, and a British squadron under Commodore Loring.

2nd. In that narrative, Capt. Phillips urged, that he had received no Commission prior to his sailing in the Baltimore: that he had none at the time the affair referred to took place.

3rd. While Capt. Phillips was in Philadelphia [Dec. 1798,] I frequently heard him say, that if the Government was not satisfied as to his conduct in the affair referred to, he desired an investigation by a Court—and I think it highly probable that Capt. Phillips said as much to the Secretary of the Navy.

4th. To my mind, it appeared from the narrative, that the first Lieutenant of the Baltimore was more censurable than any other officer—he was not dismissed, nor was he in any way punished for his conduct, that I know of. In speaking of my opinion on this point, I owe it to myself to express my consciousness that I share largely in the infirmities which belong to all human judgments.

The first Lieutenant of the Baltimore, was, I understand, distantly related to the Secretary of the Navy; but in answering this branch of the queries, it is proper that I should say, that I am convinced that this relationship had no influence whatever upon the conduct of the Secretary of the Navy, on the occasion referred to.

5th. After Capt. Phillips was dismissed, the first Lieutenant of the Baltimore was placed in command of that Sloop, until he was relieved by an officer [Capt. Cowper] holding a commission equal to such command.

6th. I have heard Commodore Truxton speak of Capt. Phillips' dismissal in terms of great regret, and as, in his opinion, unmerited. He entertained a high opinion of Capt. Phillips' professional and personal merits.

7th. Capt. Phillips' general character as an officer, was, I believe, *highly*

ly respectable. I have heard many who knew him well, speak of him as an officer of great merit.

I have the honor to be, with great respect,

Sir, your most obedient servant,

CHARLES W. GOLDSBOROUGH.

Honorable Samuel L. Southard, Secretary of the Navy.

On the 19th of April, 1825, I addressed the following letter to the Honorable Samuel L. Southard, Esq. Secretary of the Navy.

BALTIMORE, 19th April, 1825.

SIR—When I parted with you on the 14th inst. at your office in Washington City, you were kind enough to say, that as soon as my papers were returned to you from the President of the United States, you would forward me an official copy of the answers from Mr. Goldsborough to the queries which were put to him by me, and at my request, submitted to the President of the United States.

As soon as the President has made up his mind on my application you will do me the favor to communicate the same.

I have the honor to be, with respect,

Your most obedient servant,

I. PHILLIPS.

Hon. Samuel L. Southard, Sec'y of the U. S. Navy.

On the 4th of May, 1825, the Secretary of the Navy made the following communication, which was received in due course.

NAVY DEPARTMENT, May 4th, 1825.

SIR—The decision of the President of the United States is adverse to the prayer of your Memorial, dated the 5th August, 1824; and I transmit for your information a copy of the report made by the Secretary of the Navy upon the subject of said Memorial, together with a copy of the President's decision.

I am, very respectfully,

Sir, your obedient servant,

SAMUEL L. SOUTHARD.

Isaac Phillips, Esq. Baltimore.

To the President of the United States.

NAVY DEPARTMENT, December 3rd, 1824.

SIR—In obedience to your direction, I have examined the case of Isaac Phillips, formerly a Captain in the Navy of the United States, and have the honor to present to you the following statement of facts and opinions, as the result of the examination.

Captain Phillips in his memorial states, in substance, that he was, without solicitation on his part appointed a Captain in the Navy on the 3rd of July 1798, and ordered to the command of the Sloop of War Baltimore, and to join Captain Truxtun then at or near Norfolk, that he was reluctant to sail because he had not received, by some omission, as he supposed, of the Department, his Commission; but the perilous situation of a fleet of valuable merchant vessels, which he was to aid in convoying from Havana, to the United States, and the urgent solicitations of the Committee at Baltimore, united to the fact, that he was to sail with, and under the orders of Commodore Truxtun, induced him to proceed without his commission, and under a promise that when received from the Department, it should be sent after him.—That on joining Commodore Truxtun, he regretted his not having his commission, but advised him to proceed under his instructions. That he went to the West Indies, and on his return was reluctantly compelled by Captain Nicholson, to join him on a like cruise, that in consequence of a disaster to the Constitution Frigate he was left by Captain Nicholson alone to convoy the fleet of Merchantmen, on their passage to Havana, at a time of extreme peril, and without commission or other public document to prove the national character of his ship, that a sense of duty prevailed over his unwillingness to remain in his unpleasant situation, and he continued to protect, as far as his force would permit, the vessels to their ports of destination. That when he arrived off Havana, an unfortunate occurrence took place between him, and the commander of a British Squadron, which induced the Secretary of the Navy, on his return to the United States, most unjustly to dismiss him from the service,—that his dismissal was without trial, without a Court of Enquiry, and without the knowledge or approbation of the then President of the United States. That he is therefore, still entitled to his rank in the Navy, and he prays you, Sir, to give him a new commission of the same date as his original appointment.

The importance of this request both to the Government, and himself, requires that a full investigation of the facts be made, and such I have endeavoured to make.

It is very much to be regretted, that this investigation could not have been had before the lapse of so many years; and before most of the persons concerned in the transactions were dead;—But Captain Phillips states that he was not informed until very lately, that the then President of the United States, had not assented to, and commanded his dismissal from the service, and therefore could not earlier make his application.

It is a fact that Captain Phillips was regularly nominated to the Senate

30th June, his nomination confirmed 3rd July 1798, as a Captain in the navy, and the Register of the Department shews that a commission was sent to him on the 9th of the same month.

He accepted the appointment on the 9th of July, and must therefore have received the letter informing him of his appointment, but he denies that he received his commission. To the want of it at the time he sailed, he attributes the transaction with Commodore Loring, which was the cause of his dismissal.—Although I do not think that the merits of his claim rest, in any great degree on this point, yet for your satisfaction it is proper that it should be examined.

I think it must be admitted as a fact, that the commission, though sent, was not received by him, because, 1st. He affirms it; it is therefore reasonable and correct to believe it, unless disproved. 2nd. John Cowper of Norfolk, in a letter to Captain Phillips, informs him, that soon after the dismissal, Capt. Truxtun told him, that the fact was so. 3rd. Upon the representations made by him, the Secretary seems to have been satisfied, and a duplicate of the commission was sent to him on the 9th of January, 1799. But although I admit, that he did not receive the commission before he sailed, yet I do not admit the conclusion which he draws. If there was impropriety in his going to sea, without a commission, he was himself culpable on that point, more than the Department. He received and accepted his appointment on the 9th of July. He remained in Baltimore and at Norfolk, more than a month, during which time, not less than six communications, were written to him by the Department, most of them in answer to letters received from him,—yet during all this time, when almost daily communications might have been made, when several were made, he never informed the department, that his commission had not been received;—he acted toward the Department precisely, as if no such difficulty existed, he kept it in ignorance of the fact. If under such circumstances, any evil has resulted to him, or to the service, the fault is chiefly, nay, entirely his own;—He was guilty of an omission, culpable in itself, and deserving punishment.

But I am not satisfied that any evil did result. I do not esteem it important now, to enquire, how far Captain Phillips was guilty in his transactions with Commodore Loring. He was judged by his own statement, and seems to have been considered guilty of an improper submission, in permitting his men to be taken out of his ship,—to what extent he was criminal, it would not at this time, be very easy to determine, from the evidence furnished by him, or from the records of the Department. But he then relied, and now relies, principally for his defence, on the fact, that his situation was unprecedented and difficult, because he had not his commission with him. Was this in any degree an excuse? I think clearly not—no question was in reality made about his commission. He was not asked for it. Commodore Loring had much the strongest force, and usage, and courtesy, required him first to shew his commission, if he wished to see that of Captain Phillips'. He did not shew his own commission, and demand in return to see Captain Phillips's, without doing which,

he had no right to see it, and Captain Phillips would have been criminal, and deserved expulsion from the Navy, if he had shewn it. His character, or that of his vessel was not questioned in any way.—If he had had his commission, there was no possible reason why he should have shewn it.

In reality then no evil did occur from his not having it;—Nor could any evil possibly have occurred, so far as I can perceive;—Captain Phillips was an American, all his Officers were Americans, he was on board a Ship of 20 guns, bearing every mark of its national character. Every Officer and every sailor, was a testimonial not to be misunderstood by any one. Had he met a French vessel, and his character been asked, it would have been his duty to render an answer very different, from the exhibition of his commission—meeting an English vessel, the circumstances which are before mentioned, would naturally prevent all enquiry, but should enquiry have been made, and the commission of the vessel, making the enquiry, been shewn, Captain Phillips had, or ought to have had, in his possession, more than enough to furnish a conclusive reply. He had from the proper Department of the Government, a letter giving him the appointment of Captain, and assigning him to the command of the vessel, which carried 20 guns, a letter of itself, all that any foreign Officer, would have had a right to demand. He had also four other letters of the 17th and 21st July, and 6th August, from the same authority, directing him in the enlistment of his men, and the preparation of his vessel. He had his letter of Instructions of the 9th August for the direction of his cruise; and it enclosed the Act of the Congress of the United States, authorizing the capture of the armed vessels of the French Republic, and the Instructions of the President, founded upon that Act. He had further, a letter of the 10th August, enclosing lists of the Signals furnished by Admiral Vandivert, by which British and American vessels might know each other at sea, and which had been agreed to, on our part. With these documents in his possession, who would have ventured to deny his national character, and acted on the denial? And what Government would have sustained an Officer who had dared to do it? Surely not the British,—Surely no one. I shall be pardoned the suggestion then that, under such circumstances, the apprehensions which Captain Phillips urges, as an excuse for his conduct, were entirely without foundation, and must have resulted from very incorrect notions of his situation, character and duties.

After the return of Captain Phillips to the United States, viz. on the 10th of January, 1799, the then Secretary of the Navy wrote a letter to him, dismissing him from the service.—In February following, he returned his Commission to the Department;—so far as can now be discovered, there was but one letter sent to him, and one received from him, subsequent to his dismissal.—They both relate to the reasons for the Act.—And that of the Secretary referring to his own statement of the transaction, imputes to him gross misconduct in submitting to the orders of the British Lieutenant, who was sent on board his ship by Commodore Lor-

ing; but that statement cannot now be found, having probably been lost in the destruction of the Public Offices, some years since. Nor does it seem to be of material importance, in determining whether Captain Phillips ought to be restored, however he might find it useful to his character in other respects.

Upon this dismissal, which, if legal, excluded him from the service, and leaves him without claim to relief, he raises three objections. 1st That it was improper, because he had no Commission. If the view I have presented on this point be correct, there is no validity in this objection. 2d. That the letter dismissing him, was altogether different from that which is on the records of the Department, and hence he infers, I presume, that the transaction bears marks of corruption, and ought not to be sustained; and that if this letter which assigns the reasons for the Act, had been received at the time, he should have been able to disprove the reasons and relieve himself from the punishment. I am not satisfied that he is correct, either in the fact or in the conclusion that he draws from it. 1. As to the fact, what letter was sent to and received by him, he asserts on the honor of a Gentleman and Officer, and proffers himself ready to testify, that the letter received was very short, of not more than three lines, and contained no censure on his conduct, nor assigned any reason for his dismissal. And he furnishes two statements, one by David Winchester, Esq and the other by Mrs. Elizabeth Phillips, (both, I believe, very respectable and intelligent,) in which they declare they saw the letter, and confirm his declaration respecting its length and contents.—I have no hesitation in attributing the utmost sincerity of belief and purity of motives to *all* these statements, but, with the evidence before me, I am not able to rely very confidently on their accuracy. They relate to a transaction almost a quarter of a century ago, and concern a matter, the length and contents of a letter, about which the human memory might very readily err, and the case affords strong reason to believe that it does err.

In the first place, it is very improbable that an Officer, who had been appointed but seven months before, and in whom the Secretary had more than once expressed his confidence, should have been dismissed, without assigning any cause, at a time too when his services were needed, for the Government was under the necessity of sending out the Vessel immediately, and before an Officer could be procured, of proper rank, to command it.

2. On the same day on which this letter was written, one was addressed to Lieutenant Speake, who was by his removal, left in command of the Vessel, and is recorded with it; and in this letter a reason for the dismissal is assigned; is it at all probable, that the Secretary would have given his reason to the Lieutenant, and withheld it from the Captain himself?

3. Had the letter contained no reasons, would they not have been asked? No such enquiry can be found, but so far as the contents of the letter then received from Captain Phillips can be known from the answer to it, of the 20th February 1799, it contained a statement refuting the alle-

gation of misconduct in the affair of Captain Loring. Why refute a charge not made? Why deny the existence of a particular reason for the Act, when neither that, nor any other reason, had been assigned.

4. In a letter of the 6th of February 1799, to Captain Truxton, the Secretary assigns the motive for his dismissal. Why assign it to him, and not to the man dismissed?

5. The letter of the Secretary of the 20th February 1799, is manifestly designed to support, by argument, the reasons given in the previous letter, and it states that those reasons had been submitted to the President.

6. But the argument which is more conclusive, and which I confess, is to my mind, incomparably more strong than the recollection of any three persons, at such a distance, and on such a point, is, that there is no such letter on record as they say was received: but there is a letter recorded at that time, and of *that* date, a copy of which is furnished to you, and which does assign, most distinctly, as the reason, founded on his own narrative, his tame submission and descending so far as to obey the orders of the British Lieutenant to have all hands called, and give him a list of their names." Whether this reason be true or false, it matters not, as to the point now under consideration. The letter is recorded. If it were not written or sent, the record has been falsely made, and it must have been so made, deliberately and knowingly.

I am not prepared, on the opposing evidence, which is furnished, to cast upon the memory of the then Secretary of the Navy, an imputation so serious. He is not here to answer; but the fame he has left behind him, is greatly elevated beyond the suspicion of such an Act. But even were it admitted, that the letter on record is not the one sent, I do not perceive how it is to avail Captain Phillips in the object of his petition. He did receive a letter dismissing him—he left the service in consequence of it—his Commission was actually taken from him, and it is impossible that he could have been ignorant of the cause of his dismissal, whether the letter assigned it or not. Suppose the reason be not in the letter, what evil has he suffered by it?—None that I can perceive. He alleges, however, that this letter was written without the authority of the President, and without his knowledge, and therefore illegal and void—And he offers in support of this allegation, the impression *now* upon the mind of the then President, that he did not order him to be dismissed, or consent to it, because he has no recollection of it. Mr. Adams does not seem to have expressed himself with entire confidence on this point, although his impression is very strong. I am perfectly aware of the uncommon retentiveness of Mr. Adams' memory, and vigor of his intellect, at this late period of his life.—I have lately seen and conversed with him, and to me, he seemed the most extraordinary instance of both, that I have ever witnessed, at an age so advanced, and with a body so enfeebled. But I am convinced that his memory fails him in this instance. It cannot be that Mr. Stoddert, on his own responsibility, and without consulting the President, performed so high and painful an exercise of power. It cannot be, that after having performed an act of this character, he should, four times, and perhaps oftener

have deliberately published, and then recorded a falsehood respecting it; as he must have done in his letters of the 10th of January, and 20th of February, 1799, to Captain Phillips; his letter of the 6th of February, to Captain Truxton, and of the 10th of January to Lieutenant Speake. In the first of which, he says he is "commanded by the President to inform Captain Phillips; that his services are no longer required." In the second, he states the points he "could not get over, in forming his opinion to lay before the President;" and in the two latter, he alludes to and justifies the exercise of the power in the President. It cannot be that detection should not immediately have followed such a departure from every thing legal and honorable, for Captain Phillips had zealous friends, and has them still. The Act was, with him, the subject of enquiry; with others, of conversation; and the Journals of the day contained not only statements of the fact, but long and harsh comments connected with it. If all these sources of detection escaped the notice of the Executive, it is the most wonderful of all the incidents connected with this singular affair. I am compelled, therefore, to believe, Sir, that the power was exercised by the Executive as it is recorded, and that his memory, at this late day, fails to retain any part of the transaction. Captain Phillips was dismissed, I have no doubt by competent and legal authority. Whether that authority was wisely and correctly exercised, it is not easy to determine, after a quarter of a Century, and after the death of most of those conversant with the facts, and after the loss of a part of the documents relating to it. But, even with the evidence as it is, I should hesitate before I disapproved it.

But, Sir, Captain Phillips is entirely without claim to restoration, even if all his facts and arguments be sound. On the 3d March, 1801, an Act was passed by Congress, "providing for a Naval Peace Establishment, and for other purposes," the 3d section of which, provides that the President of the United States retain in the Navy service, in time of peace, 9 Captains, 36 Lieutenants, &c. &c. and he is authorised to discharge all the other officers. That Act was shortly afterwards executed. There were, at the time, 28 Captains in the Navy, all in the full exercise and enjoyment of their commissions. The prescribed number was retained; the rest, whatever claims they had on public confidence, or on public gratitude, were obliged to become private citizens. No one who was not retained, could be a Captain in the United States' Naval service. Captain Phillips was not one of the number; and whatever, therefore, may have been his previous situation, his subsequent is irreversibly defined by the operation of this law.

I might, Sir, present to you, the unjust effect which would be produced upon all the officers now in service, by placing Captain Phillips at their head, after 25 years of absence from their Corps, and after they have hewn their way to their honors and to the affections of the country, through the late war, but it is not necessary. There can be no clearer conclusion, than that he has no *right* to be gratified in his petition, it is therefore useless, to discuss the *expediency* of granting his prayer.

I have the honor to be, very respectfully, your obedient Servant,
SAMUEL L. SOUTHWARD.

P. S. After I had written the foregoing report, and was about to present it, I received a letter of Capt. Phillips addressed to you, in which he requests that you would call upon C. W. Goldsborough, Esq. who was a Clerk in the Navy Department, in 1798, to state what he knows of the transaction. I sent a copy of his letter to Mr. Goldsborough and have received the answer which is now enclosed. You will perceive that it furnishes no new evidence, nor does it change in any respect that view of the case which I have taken.

Decision of the President of the United States.

WASHINGTON, 3rd May, 1825.

I have considered the Memorial of Isaac Phillips, dated Baltimore, 5th August, 1824, addressed to the late President of the United States, praying to be restored to his rank in the Navy of the United States, and to be furnished with a new commission bearing date in conformity with his appointment, on the 3d day of July, 1798.

I have also examined all the documents exhibited by him in support of his said memorial, and have considered the report of the Secretary of the Navy of the late President of the United States; dated 3d of December, with the Postscript to the same.

From these papers it appears to me beyond all reasonable doubt that the memorialist was on the 10th of January 1799, dismissed from the Naval service of the United States, by order of the then President of the United States; and under these circumstances, I consider the legal authority of the President of the United States, not competent to grant the prayer of his memorial.

The Secretary of the Navy will cause a copy of his report, and of this decision to be furnished to Mr. Phillips.

("Signed,")

J. Q. ADAMS.

To the Report of Mr. SOUTHARD, Secretary of the Navy, and the decision of the PRESIDENT of the UNITED STATES, founded upon it, I will now devote that attention, which, from their importance, and their high origin, they respectively demand. No man entertains a higher opinion of the constituted authorities of his country than I do. No man feels a more profound respect for the splendid talents, stern integrity, and extensive information of the President; or more properly estimates the worth and character of the Secretary of the Navy, than myself. High and imposing as is the authority of this Report, yet its character is not so exalted, as to deter a freeman in defence of his rights, an officer in the vindication of his honor, in an effort to rescue his character from reproach, and obtain redress for

unmerited injury, to shrink from the task of giving this document a thorough examination. I shall endeavor to do this with candor, but certainly with freedom. I shall do this with due respect both for its author, and the high station he holds in the government, and for the matter which the Report contains. I am no Diplomatist, and cannot, therefore, be expected to use much circumlocution or finesse, in disposing of a plain matter of fact. I am no Courtier, and have but little time or patience to exhaust in unmeaning compliments, or idle declamation. I do not come before the public as a kind of *Charity suitor*, to beg favors; but as an injured man, to demand my rights, and justice for my wrongs. I do not ask this in violation of law, but in consonance with its soundest provisions. I demand a hearing of my case, and when that is had, if it shall then be found that I have no legal or equitable claim to redress, I shall be satisfied: for I do not seek it upon any other terms.

Why this laboured report should ever have been made, I confess myself at a loss to determine. Mr. Southard has, indeed, prefaced the report, by saying, that "*in obedience to directions I have examined the case of Isaac Phillips,*" and from this it seems, he has not only given, what he calls a *statement of facts*, which evidently was the amount of the *direction*; but he has gone further, and supplied us with a liberal catalogue of opinions. This was certainly, no part of his official duty. Why he should have tendered this voluntary aid to the President, in coming to a decision of my case, remains, yet, to be ascertained. As a public officer, he cannot be supposed to have any personal feeling upon this subject, and yet the very partial view he has taken of it, the manner in which his opinions are formed and expressed, seem to justify such an inference. My case presents an important question, in which the whole nation, the government, the navy, as well as myself, are deeply interested. Its determination, therefore, should rest upon a fair and impartial examination of the evidence; upon a candid exposition of the facts; a clear understanding of the law, and a rigid adherence to jus-

tice. 'This will render it a valuable precedent, entitled to the highest respect of the nation, should a similar case ever occur again. Its merit should not be frittered away, by petty considerations of policy or *convenience*; nor should its justice be obscured by sophistry, or denied through fear or favor. The decision, in this case, will establish an important principle, and in a national point of view, it should be decided as justice demands, and the law prescribes, without any *deep or feeling consideration* for the *convenience* of myself, or of others.

After giving, what the secretary calls, *a statement of facts*, he remarks: that on the 9th of July, 1798, I accepted my appointment, and must, therefore, have received the letter informing me of it; and by which, he pretty strongly insinuates, that I received my commission also, in as much, as there is an entry on the register of the department, that it was sent. With considerable reluctance, however, he admits, that I did not receive my commission; but at the same time, he thinks the merit of my case, does not rest, *in any great degree*, upon this point. With equal reluctance too, he admits, that Mr. Stoddert was finally satisfied of that fact, as on the 9th of January, 1799, he *sent me a duplicate*. He should have recollected also, that the record, of the navy department, contains Mr. Stoddert's letter to me, in which, nearly one month after he had *himself given me this duplicate commission*, he states, *that I never had informed him, that I had not received my commission*, to which I was first entitled. If he had *recollected* this, which is *one of the facts* in my case, that ought to have been embraced in this statement, he would not, perhaps, have been so unjust, as to have insinuated, that Mr. Stoddert gave me a duplicate, rather upon the strength of my statement, than from a conviction, that the first commission had not been sent to me on the 9th of January, as mentioned in the records of the department. With whatever feelings the secretary framed this report, he evidently seized upon every circumstance, however trivial, to draw an inference unfavourable to my petition, while al-

most every fact in my favor, is either neglected, forgotten, or totally disregarded. And although he, at length, admits that I did not receive my Commission, before I went to sea; yet he says, if there was impropriety in my going to sea without it, *I was more culpable, on that point, than the Department.* I cannot suppose Mr. Southard made this declaration, with any reference to the manner, in which the business of the Navy Department, is *now* conducted: and yet, it is difficult, even when aided by his reasoning, to justify the remark. He says, I remained in Baltimore and Norfolk, nearly one month after my appointment; that not less than six communications were written to me, during that time, mostly in answers to letters received from me, and yet, I never informed the department, that I had not received my Commission, and that I kept it in ignorance of the fact. This is indeed, wonderful! An officer who has been one *whole month* appointed, because he does not daily tease the department for his Commission, like a child, who anticipates great delight from the possession of some pretty toy, is therefore charged with having kept that department in utter ignorance of its duty, both to him and the nation. Was the department to be reminded by me, that I had not received my Commission, before it became necessary that I should have it? It would have been an insult to the Secretary to have made the application, for it would have implied a doubt, that he might not perform his duty. It was the business of the department to send it, and I had no reason to presume, but it would come in time. When it became necessary for me to have it, before I sailed, I did apply for it.

But is it the custom of the Department to send an Appointment, a Commission, or an Order to an Officer, without requiring him to acknowledge its receipt? It is not so in other nations, and it once was not the case here. I trust it is not the case now. A contrary practice would be too loose for that order and regularity, that ought to govern affairs of such moment, and would be subject to the worst

results. If it was a custom, to require the receipt of communications of this character, to be duly acknowledged, the Department must have my letter to that effect, upon record, if my Commission was ever sent and received by me. There is a record of my letter, acknowledging the receipt of my appointment, and if no letter, acknowledging the receipt of my Commission was received, that, of itself, was information sufficient, that it had not reached me. It was strong presumptive evidence, that my Commission was miscarried, if it was *really* sent, and it was the duty of the Department to have enquired, and have ascertained the fact. That this is a necessary custom, no one, it is believed, can doubt. Unless the business of the Department is either much neglected, or very loosely conducted, it is indispensable. Else it would be easy to shift the responsibility of the Department, upon the Officers of the Navy, and make *them* answerable for the negligence of every clerk and runner in it. Suppose an order, assigning to an Officer the speedy execution of some important duty, be directed, by the Secretary, to be forthwith sent. Some clerk, probably, notes the order upon the record. But the order, through the negligence of some subordinate agent, is *not sent*—consequently, the duty specified in it, is not performed. But, says the Secretary, that the order was sent, is evident, for it is noted upon the record. That it was not obeyed, is also evident; and the Officer has been guilty of disobedience of orders and neglect of duty, and shall be dismissed the service. Such cases might daily occur, and involve the same consequences, if it was not requisite to require an acknowledgment, of all communications, from the person who receive them; and the want of such acknowledgment, is, at least, as strong and conclusive evidence, that such communication *was not received*, as the note upon the record is, *that it was ever sent*.

It is necessary that the Department should be correctly informed, at all times, that every order or communication, that issues from it, reaches its destination in due time, that the officers to whom they are directed, and who are charg-

ed with their execution, should be made accountable for their strict observance. Hence, an acknowledgment from the Officer, to whom any such communication is directed, is proof of the first importance, and of the highest character. It is proof the Department always should possess, and are accustomed to demand. It is their duty to require it. If the receipt of a communication is not duly acknowledged, it is to be presumed it has miscarried, or been lost, and the Department are bound to ascertain the fact. It is not entitled to be informed, from an officer, that an order or communication has not reached him, but it is the duty of the Department to enquire of *him*, if he has received it. An officer cannot be expected to anticipate his communications, nor often to be indirectly informed, that any are to be sent. The case of an appointment, it is true, is an exception to the general rule, but should form none in the common practice of the department. An officer, certainly, has reason to expect, that his Commission will follow his appointment; but common delicacy, respect for himself and the Government, would induce him to suppose, that it would be sent, when the Department should consider it necessary. The Department knew the purpose for which I was appointed, the duty that was about to be required of me, and the necessity and importance of my Commission, quite as well as I did, and had a right to determine the time and manner of sending it to me. I had no right to prescribe rules, or dictate to the Department, in what manner, or at what time, it should perform its duty. The neglect of sending the Commission, therefore, was not mine, as Mr. Southard asserts, but, exclusively, that of the Department. I believe I may venture to assert, that the practice I have here contended for, is common with every well regulated government: and I should be sorry to understand, that ours is more negligent. If I am correct in these positions, Mr. Southard's opinion, upon this point, is unsound, and what it ought not to have been, *even if it had been required of him*. His reasoning upon it, is unfair and sophistical, and his conclusion, that I was *deserving of punishment*, be-

cause I omitted, literally, to beg for my parchment, is ungenerous and uncandid.

Mr. Southard is not satisfied, however, that any evil *did result*, from my going to sea without my Commission. Nor does he deem it important, now to enquire, how far *I was guilty*, in the affair with Commodore Loring. Let it be remembered, that he is making a report upon my conduct, in that very affair. I presume, he would like to have credit for having made one, entitled to respect for its legal accuracy, and strict impartiality. He, no doubt, expected, and certainly intended, that this Report should have all the influence in his power to give it, in the decision of my case, or he never would have made it. He would have contented himself with doing his duty; by laying a plain, unvarnished tale of facts, before the President, embodying *all* the testimony in the case, upon *both sides*. Let it be remembered, also, that I claim my right to my rank, upon the ground, that I was *not guilty at all*, in that affair; and that I had not been legally dismissed from the service, and was, therefore, entitled to be restored. I produced evidence, to prove my entire innocence of *all the charges*, that had been alleged against me. My guilt or innocence, therefore, was an important feature in my case; and common candor should have induced the Secretary, while he *pretended* to give a *statement of facts*, to have given the whole case. But he has not done this. He has passed over every fact, that seemed to operate in my favor, either in silence, or with a kind of *sneer*, as though it was of no importance to notice them. So long as it was his object to report against me, he thought it inexpedient, I suppose, to exhibit both sides of the picture; hence, it was in some degree necessary, for the sake of consistency, to seize upon every pretext to justify such a course. If it was not so, why should Mr. Southard say, that I had been judged by my own statement, and been considered guilty of *improper submission*, in permitting my men to be taken out of my ship. Where is the fact, in my statement, to justify such a charge? On what authority does he repeat it? Not on the authority of the

statement, but of Benjamin Stoddert. Where is the mass of testimony that I have produced, to prove there was no foundation for such a charge? Has Mr. Southard forgotten it? Or has he not read it? It was among the papers before him, from which he framed this report; and yet he has not noticed it. I say, I have not been judged by my statement, as Mr. Southard alleges; if I had, I must have been exonerated from all blame: for my statement will shew, that no such charge can be drawn from it. Is Mr. Southard to be credited, then, for making an impartial report, of all the evidence in this case; when, by his own showing, he seizes upon the naked declarations of Mr. Stoddert, and relies entirely upon them; while he keeps out of view, and totally disregards, all the rest of the testimony? He seems not to have been conscious, of the existence of a single fact in this transaction, but those which serve to sustain him, in the course which he has thought proper to pursue against me. I should have expected from Mr. Southard's candor, at least, that if he attempted to make a report at all, it would have embraced the whole case; the evidence in my favor, as well as that against me. But is this such a report? From what authority does he allege, that I was guilty of *tame submission*, in permitting my men to be taken; when even Mr. Stoddert declares, that this was not the subject of complaint: but that it was for throwing my convoy into the power of the British ships, and obeying the orders of the British Officer, in calling all hands, and giving him a list of their names; charges, as relates to me, that are incontestibly proved to be false. But Mr. Southard has not, in the slightest degree, so much as attended to the evidence, which has been produced, to prove them so. All that is kept out of sight, in this *semi-official*, and most labored Report. It was, certainly, the readiest way, to accomplish the task he had undertaken: for it would not have been quite so easy, to have arrived at *his conclusions*, with this evidence staring him in the face, at every line.

But how far I am guilty, or not, he has the kind charity to say, cannot now, be easily determined, either by my

evidence, or the records of this Department. Why, then, did he deem it expedient to insinuate, so strongly, that he believed me guilty. It would have been more manly, to have said so at once, and boldly have assigned his reasons; than to have intimated that he thought so, upon the strength of the reasons given by Mr. Stoddert. This is sliding very quietly over a difficulty, it would have been otherwise, impossible to surmount. If this learned report is to be adopted by the nation, for the law and the facts in my case, all difficulty is easily overcome. My own evidence, it is believed, is conclusive, that I am not guilty at all, in any part of this transaction—and aside from the assertions of Mr. Stoddert, unsupported by a single fact, the records of the Department, are equally conclusive in my favor. Had Mr. Southard been employed, as council, to have made an argument against me, and so far as his talents and ingenuity would have carried him, to have made “the worse appear the better reason,” I should have expected, precisely such a statement of facts, and such a report, as are here produced. Or had it been necessary to protect some other and more powerful interest than mine, by defeating my petition, consequently, whatever could be sought out by inference, or imagined by a fertile invention, should be adopted for *truth*, provided it operated against me; while every circumstance in my favor, was to be overlooked, forgotten, or discarded, as *falsehood*, I should have anticipated, exactly, such a result. But from the Secretary of the Navy; from one of the highest officers of the Government, who was as much bound to afford me protection and support, as he was to brand me with censure; who should have felt no interest in this case, but that equal justice be done, both to me, and to the country; and that my claim should be decided, legally, impartially, and justly, for the honour of the government, as well as for the interest of the nation, something different from *this report*, might have been expected.

Mr. Southard thinks, that my not having any commission, was no excuse; and alleges, I know not from what authority, *that no question was made about my commission.* He certainly might have believed this, but it happens not to be exactly the fact. Or it is even possible, he did not mean to assert it as a fact, but only relied upon it, by way of argument, or *fanciful illustration.* He says it was not asked for. *I say it was.* He says that Commodore Loring had much the strongest force, and that usage and courtesy required *him*, first to shew his commission, if he wished to see *mine.* The first part of this declaration is, indeed, true. But I wonder Mr. Southard should have deemed it necessary to admit the fact; that he did not leave it to be inferred, that *mine* was the *superior force.* For he says without any qualification whatever, that Loring did not shew *his* commission, or ask to see *mine.* Now I say he did both, or what was equivalent. He offered to produce his commission, it was ready for my inspection, and then demanded to see *mine.* I might have read his commission, if I had chosen to do so; it was not his fault that I did not. But if I had, I should have been bound at once to have produced my own. I could not avail myself of a courtesy from *him*, that I could not return. I was obliged, therefore, to evade the productions of the commissions, by saying, mine was not about me. This I could do, with some propriety, as I was on board his ship. But to get rid of the necessity of producing my commission altogether, and also to conceal the fact, that I had none, I produced my appointment, signed by Benjamin Stoddert, *which I happened to have about me.* He treated it with much the same ceremony, and nearly in the same way, that Mr. Southard has my evidence; "*he did know Benjamin Stoddert,*" and could not notice his appointment. Stoddert had no power to appoint Captains in the Navy: he must see my commission, or he could not recognize the character of my ship. All this is true, and I challenge Mr. Southard, to produce any testimony, whatever, to disprove it, or to support his own declarations. He may have been misled, in

making these assertions, and no doubt he was, by some mean or other; but a man who is making a statement of *facts*, and framing a report upon them, upon which an important case is to be decided, that materially effects the government, and the honor and interest of an individual, in every respect his equal, but in official dignity, should be careful to examine his statement of facts, before he hazards assertions, of what is, or is not true.

Mr. Southard says, that if I had shewn my commission, without Commodore Loring had first shewn me his, I would have deserved *expulsion* from the Navy. This is certainly, a most finished conclusion! He says too, that the character of my vessel *was not* questioned, and that if I '*had had*' my commission, there was no possible reason, why I should have shewn it. I say the character of my vessel *was* questioned, and for the very reason, because I *had not* my commission, nor any other official document, to prove her character. That the same outrage might have been attempted, with my commission in my pocket, is possible; for the known character of our national ships, have not always protected them from abuse, from the British, in time of peace; but with it, this insult would have been differently met.

Mr. Southard next alleges, that no evil did occur, from my not having my commission; and that he cannot perceive, that any *possibly* could have occurred. That he does not perceive it, is not conclusive evidence, I suppose, that none did occur. If none did, then it was no evil to take my men; none for me to suffer it, and if there was no evil in the transaction, no blame could attach to me, for any share I had in it: consequently, I was illegally and unjustly punished, and am therefore, justly entitled to redress. He says my officers were all Americans. That is true, but they too, were as destitute of commissions, as I was. This, I suppose, Mr. Southard might, with equal justice, say, was my fault, and not the fault of the Department. As they have never, to my knowledge, been censured for going to sea without their commissions, I suppose, the whole

blame has been laid upon my shoulders. He says too, that I was on board a vessel of twenty guns, bearing every mark of her national character. That she carried twenty guns, is true; but a *pirate* might have carried as many, or even more, and the same marks of national character, to conceal her true one, and after all, *have been a pirate*. I do not believe the British doubted our national character, in reality; but they were not obliged to recognize it, without that legal evidence, which is acknowledged by the laws and usages of nations. That evidence is no other, than the Commission of the commanding officer; and for the want of it, the character of my vessel *was* questioned. Every officer and sailor, says Mr. Southard, was a testimonial not to be misunderstood. This is an assertion, in the very teeth of the fact. As to my officers, they were, at best, but blank testimonials, for the reasons I have just mentioned; and as for the men, *they were misunderstood*, for fifty-five of them were taken for *British sailors*, and five out of the number, were retained as such, and never returned. Had I met a French vessel, Mr. Southard says, and my character had been asked, it would have been my duty to have returned a very different answer, from the exhibition of my commission. I most cordially thank the Secretary, for this *valiant intimation*, although I knew as much before. My instructions did, indeed, permit me to bluster, a little, at a Frenchman; but they demanded rather more humility to an Englishman, than even I could willingly shew. Meeting an English vessel he says, the circumstances before mentioned would *naturally* prevent all enquiry; but should it have been made, and the commission of the vessel making it, shewn, I had, *or ought to have had*, more than enough in my possession, to furnish a conclusive reply. Is this fair argument? Is it either liberal, candid, or just, to reason from a state of things that did not exist in the case, and then draw conclusions from them, as if the facts were so? Was it right to make a case to suit his purpose, and then assert that such was the case before him, though entirely different? I

did meet, not only an *English vessel*, but an *English squadron* of vessels, and not one of the circumstances, that Mr. Southard has mentioned, with so much confidence, did naturally prevent an enquiry for my commission. It was made, and must, therefore, have been most *unnatural*. Yet it was made by the commanding officer, and after having proffered me his. I am perfectly aware, that the documents I had, or *ought* to have had, would have been *more than enough* to have furnished me with a suitable reply, to the demand for evidence, of the character of my ship. What I *had* was my appointment, which, with my commission would not have been wanted. That would have been *more than enough*. What I *ought to have had*, was my commission, which I had not, and without it, the other was no evidence at all.

The Secretary is quite correct in his logic, when he says, the documents *I had, or ought to have had*, would have been more than enough. But he seemed to have forgotten, or not to know, that what *I ought to have had* was my commission, and that, without it, all the other documents on board, were good for nothing, in establishing the character of my ship. In reply to the declaration, that my letter of appointment was all that any foreign officer had a right to demand, I hazard little in saying, that it is neither correct in law, nor in practice. No foreign officer is bound to respect any evidence of authority, but that which emanates from the power, that by the law of the country, can legally give it. Is that the Secretary of the Navy, or the President and Senate of the United States? Is it to be proved by an appointment of the Secretary of some subordinate department of the Government, or by a Commission, signed by the President, countersigned by the Secretary, and under the seal of the Nation? Which is the best evidence, the highest authority? Mr. Southard knows well what answer to give. He can not be ignorant of what is necessary in such a case. But his argument goes farther, and though it runs a little wild, yet I must follow him. He says, I had my private instructions. Was I to expose *them* to the scrutiny of *Strangers*? Is

this the language of the department of the Navy of the United States, in eighteen hundred and twenty five? Why give *private* instructions, if they are, upon any account, to be used as public documents? Was ^{er} my private letters to share the same fate? For they are all mentioned as the documents *I had, or ought to have had.* And what evidence, of the character of my ship, let me ask, was a printed *copy* of the Acts of Congress, that any seaman could have obtained at a book store, who had either money or credit to buy one. I might as well have produced a copy of the *Old Testament*, and attempted to have proved by it, that my ship was *Noah's Ark.* It would have been evidence as much in point, and have served my purpose quite as well. My list of signals, it is true, was some evidence, and the *only evidence* I had on board, to prove the character of my vessel, that was entitled to any respect.

Mr. Southard asks, with much apparent confidence, *who would venture to deny my national character, and act on the denial?* I answer, any man who commanded a superior force, would have ventured; and Commodore Loring *did* venture to deny it, and act upon the denial. And what is more, his Government sustained him for having *dared* to do it. Nor is he the only officer, whom the British Government, has not only *sustained.* but actually *promoted,* for violations of our National Sovereignty, and the dignity of our Flag. Mr. Southard should not, even for the purpose of this report, have asked this question, and then, exultingly, have answered it himself. "*surely not the British.*" He should not have hazarded this declaration, unless he had been *certain* that the American people had lost their recollection of the past, and that our whole history is a libel.

I can easily pardon the Hon. Secretary, for the charitable suggestion, with which he closes this part of his luminous report. For if it is human to err, he has furnished conclusive evidence, in this document, that, in him, nature has been true to herself.

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Again the Secretary refers to the declarations of Mr. Stoddert, and relies exclusively upon them, in forming his opinions; without taking the least notice of the mass of testimony that I have produced, to prove these declarations untrue. This evidence, I repeat, was among the papers that were before him, and from which he was required to make a statement of facts. He could neither have remained ignorant of the fact, or of the nature and force of this testimony. It might not have been sufficient to have satisfied his mind, for what evidence has power to convince a man against his will! But it is strange he should not at least, have alluded to it, if it was for no other purpose than to refute it. Yet notwithstanding the numerous discrepancies, and striking contradictions in the statements of Mr. Stoddert, the Secretary bases his report entirely upon them, and so far as *his statement of facts* goes, no man on earth could, for a moment, suppose, that there was any other testimony in the whole case. He repeats the unfounded charge of Mr. Stoddert, that for *gross misconduct in submitting to the orders of the British Lieutenant*, I was dismissed. Mr. Stoddert knew when he made that charge, that it was without foundation. It was maliciously false. There was not an officer, or man on board the Baltimore, not even excepting his own kinsman, my first Lieutenant; *the officer who permitted the acts imputed to me*; all of whose testimony was within the reach of the government, but who would have unanimously proved, that these charges were false and unfounded. They would have proved more, and those who are now alive, do prove more; that there was not a shadow of justice to sustain them, nor a reasonable pretext for their being made. If Mr. Southard had ever examined the whole of the testimony, and intended to have embraced in his report, an impartial view of the *whole case*, he must have known it likewise. With what degree of fairness, with what consistency then, does he bring into this report, every charge against me, and yet sedulously keep out of view, all the testimony

that goes to refute those charges? Was such conduct to have been expected from the Secretary of the Navy? Are errors to be corrected, injuries redressed, fraud and imposition exposed and punished, and justice to be administered by such rules of practice? Is the integrity of the Government to be sustained by such means? Is the confidence of the nation and the world, to be acquired and retained, by such an exhibition of the purity of its motives, and the justice and impartiality of its conduct? I do not censure Mr. Southard for the opinions he has formed; he has advanced them as his own, and is entitled to enjoy them, without being answerable to me. But he is answerable for their propriety and expression, when he promulgates them, both to me and the world. It is a matter of very little moment to me, whether he considers me guilty or innocent, of these charges. I have appealed to a higher tribunal for judgment; one as competent as himself to form opinions, and one that will hear and examine all the testimony, and decide upon the whole case. But I complain of the unfair and partial statements Mr. Southard has made, and the *manner* in which he has framed and expressed his opinions. And although he does not seem to think it of much importance, whether I am guilty or not, or what my statements contain, as regards my Petition to be restored to my rank in the Navy, yet he is pleased to say, these circumstances might be useful to my character. Why then, let me ask, did he not lay all these circumstances before the President in his report? Common justice demanded it of him, and why was he silent upon the subject? If my character did not rest upon a firmer basis, both as an officer and as a man, than the false and malicious charges of Secretary *Stoddert*, and the garbled statements, and partial report, of Secretary *Southard*, I would clothe myself in sackcloth at once, and sit down in despair.

If my dismissal from the service was legal, Mr. Southard says, I am without relief. Be it so. I base myself upon this position, the converse of which must be equally

true: *If I was not legally dismissed, I am entitled to relief.* To its legality he says, I raise three objections. First, because I had no commission. This is not an objection to the legality of my dismissal, but to its justice. I might have been legally dismissed, having been so in conformity to law, by a competent power; and yet that dismissal have been *most unjust*. It might have been the effect of corruption; have been obtained by fraud or perjury, *in violation of all justice*, and yet have been legal. It would not have been legally void, but legally voidable, and therefore entitled to relief, if the facts could be proved. Was not my dismissal unjust? Is not its injustice proved, beyond all doubt? If the manner of my dismissal was strictly legal, which I utterly deny, does that sanctify its injustice? The object of all law, is the promotion of justice. Can an act be sanctioned by the forms of law, then, which defeat its very end and purpose, and yet be irremediable? One would think not. Yet Mr. Southard thinks, that if his view of my objection, *that I had no commission*, be correct, there is no validity in this point. I hope he will admit the reverse of this position, also to be true; that if his view of this point be *incorrect*, that there is *some validity* in this objection. That it is incorrect, I have attempted to prove. How far I have succeeded, the public will determine.

My second objection, he says, is the difference of the letter of dismissal received by me, and the one placed upon the records of the department; by which he presumes, I consider the transaction so stamped with fraud and corruption, that it ought not to be sustained. And in addition to this, that if I had received such a letter, at that time, as the one found upon record, I should have been able to have proved the falsity of the charges, and have relieved myself from the punishment. Mr. Southard's presumptions, upon both these points, are certainly correct. But it seems, that *he* is not satisfied with the fact, or with my conclusion. I regret that I have been so unfortunate as not to satisfy him in either. I hope I shall be more

successful with the public, which I do not expect to find quite so sceptical, and with which I shall stand more upon a level with my official opponents, Mr. Stoddert, and his record. As to what letter was sent to, and received by me, he says, I assert upon the honour of an officer and a gentleman, and offer to testify, that the letter received by me *contained no censure on my conduct*, nor did it *assign any reason* for my dismissal. I did offer such a certificate, upon the honor of an officer and a gentleman, a voucher that no man has ever yet dared to impeach. It is a certificate offered upon terms, that were once understood, even at the Navy department, and I trust are so still. I did offer, besides, to testify to it, which I have done; not because I thought it strengthened my assertion, but because it is the legal sanction to such a document; and which, Mr. Southard, having been bred a lawyer, I supposed, would understand. I have also presented the statements of David Winchester, Esquire, and Mrs. Elizabeth Phillips, both, he says, *very respectable intelligent persons*, who confirm my assertions, and though he gives us all full credit for the sincerity of our belief, and the purity of our motives, yet he does not place any reliance upon our accuracy. Does he think us idiots then? Their certificates are given under the oaths of the persons mentioned, and I assure Mr. Southard, that they do not *suffer* by a comparison with himself, for intelligence or integrity. There are strong reasons why *they* should correctly have remembered the facts they state, as well as myself, and none why they should have forgotten them; and certainly none, if they entertained a doubt of their correctness, why they should have testified to them. They have no interest in this question, and by whomever they are known, *will never be suspected* to have erred in their statements, the high character of Mr. Southard's *suspensions* to the contrary, notwithstanding. But he does not believe them, because they relate to a transaction that took place a quarter century ago; the length and contents of a letter, about which the human memory might readily err, and he

thinks that ours do. He might have had a better reason, one nearer home, if he had but the frankness to have avowed it: because they contradict Mr. Stoddert's assertions and his record, and put an end to all his opinions, which must have cost him some trouble to have given. But although Mr. Southard does not rely upon our three affidavits, and thinks they are erroneous; yet he cannot discover the least error or inconsistency in the statements of Mr. Stoddert, though in perfect contradiction, and made within one month of each other. One would think, that if *length of time* should render testimony *suspicious*, that was concurrent throughout; that *shortness of time* should *weaken the credit* of that, which was absolutely contradictory.

Mr. Southard says, it is very improbable, that an officer who had been appointed only seven months before, and in whom the secretary had, more than once, expressed his confidence, should have been dismissed without a cause; at a time when his services were required. Hence he infers that there was a cause, and the next inference is, that it was the cause assigned by Mr. Stoddert, all the evidence to the contrary, notwithstanding. In common cases, I admit, such a procedure might appear strange; and if no other reason could be fairly assigned for it, his inferences would seem to be just. But, even admitting Mr. Stoddert to have been actuated by the purest motives; yet it is evident, that he acted under a mistake of the facts. Admitting also, that the President thought there was cause for my dismissal, and ordered it as Mr. Stoddert alleges; yet if from any impressions, he acted prematurely and unjustly, does that furnish a reason why I should not have redress, whenever I can make those facts appear? If the constitutional powers of the President were transcended by this act, provided Mr. Stoddert's assertions are true, am I still, without remedy?

But there was a sufficient reason to induce Mr. Stoddert to do this, in the way Mr. Adams seems to believe it was done, and which, at once, obviates all difficulties in understanding

its true character; and which shews, that it was not so *very strange* as Mr. Southard supposes. It was a question with him, who should be punished for his negligence, himself or me. If the blame of this affair could not, by any contrivance, be fixed upon me; if some plausible pretext could not be seized upon, to charge me with misconduct, and dismiss me from the service, with such a weight of odium upon me, that I must necessarily sink under it; the truth would ultimately appear; the whole blame would fall upon himself, and inevitably drive him from power in disgrace.

It became a question then, who should stand or fall, himself or me. And what project so likely to effect his purpose, as a sudden and unexpected dismissal from the service, without deigning to assign a reason for it, by which the eyes of the whole country would at once, be fixed upon me, as an object of disgrace, of prompt and energetic justice; and stamped with a *record of charges*, most likely with the American people, to dishonour my name, and render it difficult for me to repel them. It was a bold and daring effort, I admit, but one that has succeeded in affairs of state, more than once. If he failed, and I should finally have succeeded in justifying myself and in regaining my station and the blame had consequently fallen upon him: he would have been in no worse condition, and most probably would have fixed a suspicion upon me, that with a portion of the community, at least, would have divided the odium with him. With these he would have gained a share of sympathy, who would seek to palliate his conduct, by throwing as much of the blame as possible upon me. Had he no probable cause, then, for his conduct? Is not this inference justified by the history of this transaction? The evidence is before the public, and I am willing to abide their decision.

Mr Southard's second reason, for thinking it improbable that the recorded letter is not the one sent to me, is, that on the same day, a letter was addressed to Lieutenant Speake, who was left in command of my vessel, and is recorded with it, in which a *reason was assigned* for my dis-

mission. And then he asks, is it at all probable, that he would have given a reason to the Lieutenant, and withheld it from me? Let it be remembered, Fellow Citizens, that this Lieutenant Speake was the kinsman of Mr. Stoddert; that he was the first Lieutenant of the Baltimore under my command; and *was the officer on board who obeyed the orders of the British Lieutenant, in calling all hands, and giving him a list of their names*, while I was absent from my ship; charges which Mr. Stoddert has so often made against me, and for which, he says, I was dismissed from the service. It was this same Lieutenant Speake, who *called all hands*, and not me; it was he who *obeyed the orders of the British Officer*, and not me; it was he who gave the *list of their names*, and not me, for I took it from the British Officer when I came on board, and ordered the men to quarters. I do not blame Lieutenant Speake for this, but I blame Mr. Stoddert for charging me with his misconduct. *Why was not he dismissed? Why was he suffered to escape without censure, and left in command of the Baltimore, who suffered the indignity to the American flag, so vehemently complained of, and the whole transaction charged upon me? Mr. Stoddert knew all these facts, he had them from me. He could hold correspondence with Lieutenant Speake, he could have obtained them from him. The other Officers and the crew were within his reach, he could, if he had wished it, have ascertained the truth from them. If he doubted the accuracy of my statement, he could have enquired of others. There was no room for errors, no palliation for his conduct. I was to be sacrificed to screen the secretary and his kinsman, and it was necessary the plan of operations should be consistent. It was necessary, when he had framed a letter of dismissal for me, that would answer to place upon record, that Lieutenant Speake should know what had been done for their mutual benefit. And if he was to remain in command of the ship, it was necessary also, that the same reason assigned for my dismissal upon record, should likewise be communicated to him.*

This too, at some future day, might serve to strengthen the credit of the records. It has produced that effect, at least, upon the mind of Mr. Southard. But he enquires, if the letter had contained no reasons, would they not have been asked? No doubt, hence it was necessary to furnish Lieutenant Speake with an answer. He says, so far as the contents of the letter received from me, can be known from the answer to it, mine contained a statement refuting the allegations of misconduct. Why then, he asks, refute a charge not made? Why deny the existence of a *particular fact*, when neither that, or any other reason had been given? These are indeed *most profound queries*, and it required the sagacity of Mr. Southard's genius to have conceived them. I must, in the nature of things, have known the character of the *whole transaction* with Commodore Loring. When I was dismissed from the service immediately after, and that having been the only affair in which I had been engaged, while in the service, I must have known that I was dismissed upon that account. And is it so far beyond the comprehension of the Secretary, that he cannot conceive it possible, or even probable, that I could have justified myself by making a statement, refuting all allegations of misconduct in an affair, the whole of which I understood, and *some part*, or the whole, I must have known, was censured by my dismissal, general as it was, without my knowledge of the *particular reason*? Surely this is descending to quibbles, almost too trifling to answer. It is unmanly sophistry, beneath the candour of an honest mind, or the dignity of the Secretary.

Mr. Southard's fourth reason is, that; on the 6th of February, 1799, Mr. Stoddert wrote to Captain Truxtun, and assigns the motive for my dismissal. That letter is here published, as well as a statement, shewing Captain Truxtun's opinion of the transaction. And why, he asks, should he assign reasons to him, and not to the man dismissed? I answer, that having taken the course he did against me, it became necessary, to himself, to strengthen his proceedings by endeavouring, by every mean in his power, to render them

consistent; by using every effort to encrease the odium, his dismissal could not fail to occasion, where the facts were not known. For in the same proportion as he could, by any artifice or management, render me culpable, in the affair with Loring, would he stand acquitted, for the course he had pursued against me: while it served, also, to conceal his own misconduct.

Mr. Southard's fifth reason is, because Mr. Stoddert evidently designs, in his letter of the 20th February, 1799, to support his reasons by argument; and alleges he had submitted those reasons to the President. Mr. Adams says, however, that this is not true, and denies his knowledge of, or participation in my dismissal; and concludes by saying, *he suspects I never was dismissed*. But the contradictory statements in Mr. Stoddert's *attempted* arguments, and the evidence of Mr. Adams, that the whole proceeding relative to my dismissal, was a piece of fraudulent management of the Secretary, seem to be sufficient to entitle this letter to the highest respect and confidence of Mr. Southard; not I suppose, because they are of that character, but because this letter supplies him with an inference, at least, in support of a favorite opinion. But what is most conclusive with Mr. Southard, upon this point, is, that a letter of the same date is found upon *record*. And though that record contains charges that are contradicted by all the testimony, yet, in as much as it is a record, he seems to feel himself bound to pay a profound respect to it, even against the force of evidence, and the dictates of reason and common sense. For he says, whether the reason be true or false, it matters not, *the letter is recorded*. The amount of the whole of which is, a record is, a record. A most profound and logical conclusion, certainly, and one, that the genius of few men, ever could have arrived at.

But the Hon. Secretary, after wading through a deep and heavy course of most profound argument, cutting logic, and ingenious reasoning, at length arrives at the very apt conclusion, which no one, who can combine two ideas, will for one moment dispute—that if the letter of dismissal on

record was not *written or sent*, the record has been falsely made, and if so, it *must* have been made so, *deliberately and knowingly*. That it has been so made, it does not require a second Daniel to decipher.

It is magnanimous and kind in Mr. Southard, not to desire to cast upon the memory of the late Secretary, an imputation so serious. It certainly was no part of his duty to have done it, nor was it necessary to have cast imputations upon me. All he had to do was, to lay a candid and impartial statement of the *whole case* before the president. He was not bound to cast imputations upon any one. The evidence speaks for itself, quite as clearly, as he can speak of it. It was no part of his duty, either to cast imputations, or draw conclusions. But when he chose to do both, and adopt all Mr. Stoddert had said and done as conclusive evidence, that it was true, correctly and legally done, and to disregard *every thing* that had a tendency to contradict it, he was compelled to cast imputations, either on him or me; and not only so, but upon every one, who has given any testimony against the truth of Mr. Stoddert's assertions, and the correctness of his conduct. He has made his election, and must abide the consequences. It is too late for Mr. Southard to gain credit, for his generous feelings, and his great respect for the memory and character of the dead, when he has voluntarily travelled so far out of his direct way, to cast imputations upon the living.

But Mr. Southard says, if this is not the record of the letter sent to me, he does not perceive that it can avail me in my petition, because, I did receive a letter, dismissing me, and left the service in consequence of it: and he now admits, what, but a moment before, he seemed to think mysterious, and *passing all belief*, that it is *impossible* I could have been *ignorant* of the cause of my dismissal, whether the letter assigned the reasons or not. A few minutes since, for the sake of supporting his argument, he seemed to think it *impossible* I could have made a statement, *refuting the charges of misconduct* against me, unless the letter of dis-

missal had contained the *particular fact*. Now, for the like purpose, I suppose, he asserts, with equal confidence, that whether my letter of dismissal assigned any reason for it, or not, *it is impossible* I could have been ignorant of the cause. And then, to quiet all further difficulty, as though *his perceptions* must be the *standard* of right or wrong, he says, that if my letter of dismissal did not contain any reason for it, *he cannot perceive* that I suffered any evil from it. My explanation upon that point has been given, and the public will judge of it. All the favor I ask, is, that the *standard*, set up by Mr. Southard, may not be adopted, in coming to a conclusion upon this point.

Mr. Southard's next point is, that I object to the legality of my dismissal, because it was without the knowledge or consent of the President, and that I contend, it is therefore void. And here, I believe, for the first time, he alludes to any evidence I have produced in this whole case; the evidence contained in the statements of Mr. Adams. He, however, thinks Mr. Adams has not expressed himself with *quite confidence enough*, upon this point, although his impressions are strong. He seems to be aware of the retentiveness of his memory, and the vigour of his intellect, even at this late period of life. But mark the consequences. As though it would be the highest injustice, or produce some great national calamity, if I were to obtain any redress for the injury that has been done me, Mr. Southard cannot, even with *his fertile invention*, contrive any possible way or mean, by which he can reconcile the impressions of Mr. Adams, however strong, with the truth. I know it is impossible, with such truth as he wishes to establish. Hence, he cannot arrive at any other conclusion, than that, *in this instance*, the memory of Mr. Adams fails him. He seems to forget, or rather, not to have taken into his account of inferences, that at the time Mr. Adams made these declarations, his memory was not so much impaired as it probably is now; that he was then more vigorous, both in body and mind, than when he saw him. He seems to have forgotten too, that Mr. Adams recollected

all the other circumstances of this affair, with perfect accuracy, and that his recollections are corroborated by all the other testimony. What reason, then, to suppose his memory fails in this? If his recollections had been contradicted by other testimony, in relation to any other part of the transaction, I admit it would have furnished reasons to suppose, his memory might also have failed him upon this point. It is a rule, in giving effect to testimony, that if a witness, whose veracity alone is not entitled to credit, testifies to facts, that are confirmed by other witnesses, whose truth and veracity are unquestioned, that it gives strength to his testimony, and confirms the whole of his statements. Mr. Adams' recollections of this transaction, are confirmed by the concurrent testimony of *all the witnesses*, who have described it; and yet, because it does not happen to suit Mr. Southard's views of my case, he is unwilling to allow him as much credit for his statements, as the lowest of mankind obtain, under similar circumstances, in a Court of Justice. Surely Mr. Adams should thank him for the high compliment, paid to his understanding and integrity. He has no hesitation, therefore, in pronouncing him to be mistaken. And what *weighty reason* does he assign, for supposing that Mr. Adams is incorrect? Why, one of his overwhelming inferences; because *he cannot think*, or more properly, because *it is inconvenient for him to think*, that Mr. Stoddert would, on his own responsibility, have performed so high an exercise of power; and because, he had four times published, and then recorded, a *falsehood* about it: although he had strong reasons for doing it, and his very publications and records of the falsehood, from the effect he saw they were producing, was calculated to conceal the fraud. But he can find no difficulty, in supposing Mr. Adams to be under a mistake, without any reason whatever.

Mr. Southard says, that such a departure from every thing legal and honourable, would immediately have been followed by detection. He undoubtedly would have been detected, but from a notion that *then* seemed to prevail, that

the President had power to dismiss an officer, without a trial. My demand for a public investigation having been refused me, induced me and my friends to conclude, that Mr. Adams would deny me all redress; and from our having no suspicion, at that time, that these were *not* entirely the acts of the President, as Mr. Stoddert alleged—and what had still more influence over me, the powerful intercessions of my political friends, that I would not injure the cause of his re-election to the Presidency, the period for which was approaching, and which, from the high tone of parties, evidently was doubtful, I was induced against my feelings, and my better judgment, to remain quiet. And it was not until long afterwards, by mere accident, that I obtained sufficient; and what I considered, conclusive evidence of the fraud that had been practised upon me, and the illegality of my dismissal, when I determined to bring the matter to a public hearing. Pursuing his chain of reasoning upon this point, Mr. Southard, at last, arrives at the conclusion, that the power of dismissing me was exercised by the Executive, as it is recorded, and that Mr. Adams has forgotten some parts of this transaction. Hence, he says, he has no doubt, I was dismissed by competent and legal authority.

But, whether the President possessed the power of dismissing me from the service, without a trial by a Court Martial, or not, is immaterial in the present case, for he has denied that he ever exercised that power, or gave authority to the Secretary to do it, in his name. I am willing to risk his declarations, upon this subject, with the American people, even against the wise doubts, conscious misgivings, and luminous inferences, of Mr. Southard. If he did not possess the power, my dismissal was *certainly* illegal. If he did possess it, but did not exercise it, as he asserts, my dismissal was no less illegal, for no other person could exercise an authority, vested alone in him.

But although it may not effect my case, yet, as the dictum in the Naval Chronicle, has raised the question in regard to me, it may not be improper to enquire, upon what

principle, the exercise of this high prerogative of sovereignty, is claimed for the President of the United States. Some of the most distinguished and intelligent among the framers of the Federal Constitution, have denied, *that the President had power to dismiss a Commissioned Officer, of the Army or Navy, without a trial by a Court Martial.* Many of the ablest men our country has ever produced, have entertained the same opinion. I am aware that there are contrary opinions of respectable authority, and that by a kind of common consent, this power has, by many, been conceded. But no such concession, it is believed, can confer a power upon the President, not delegated to him by the Constitution, either in express terms, or by necessary implication, as incident to the exercise of some authority, specially conferred. I am sensible, also, that cases have occurred, in which this power has been exercised, and that in raising this question therefore, "*I tread upon holy ground.*" But there are conflicting opinions upon this subject, entitled to high respect. They are of serious moment, and no injury can accrue by their being settled, to the understanding of the American people. It is, comparatively, of little consequence to whom power is delegated; but it is of the highest importance, that the people should know in *whom* it is vested, and *who* may legally exercise so high a prerogative.

If the President of the United States possesses this power, he has derived it in one of three ways. It is either an incident of Sovereignty, necessary to the Executive authority, not otherwise provided for; A power specially delegated to him by the Constitution; Or, it is conferred by implication, as incidental and necessary to the exercise of some power, thus delegated.

Is this power an incident of Sovereignty, necessary to the Executive authority, not otherwise provided for? It is humbly conceived, that it is not. In the arbitrary and despotic governments of Europe, all power is vested in the Sovereign, and emanates from him. Even in England, the most limited monarchy in the world, the King is still the

fountain of honor, and of power. And being so, he retains all that he has not, from time to time, either from necessity or choice, specially ceded away to the people. *Magna Charta*, the great bulwark of British freedom, as well as every vestige of liberty which the people of Great Britain enjoy, under their Constitution, are all cessions of power, of this character. It follows, then, as the King is the original fountain of all power, that he retains whatever he has not thus ceded away. He *can* exercise this power, for he has *not* ceded it away. He can create offices; appoint officers to fill them; can confer titles of honor; declare war and make peace. As he alone can make appointments, they are held at his pleasure, consequently he has the power to annul or revoke them. It is expedient that he should exercise it, for that power is vested no where else.

In this country, we see the reverse of all this. Here all power is vested in, and emanates from the people. They retain in their hands all the power of the Nation, but what they have specially delegated to their rulers, by the Constitution. The *People*, are here, the *Sovereign*. Whatever power they have delegated to their rulers, those rulers can exercise, and no more; the rest, the people have retained. This is in accordance with the provisions of the tenth article of the amendments to the Constitution. The power of the President of the United States, is limited, therefore, by the terms of the Constitution. He can exercise no authority beyond its letter and its spirit. We must look to that instrument, then, for his authority to exercise this power.

Is this power, specially delegated to him by the Constitution? It is believed that it is not. All the powers of the President are there defined, but this is not of the number. The question then remains to be answered, is it conferred upon him by implication, as incidental and necessary to the exercise of some power, specially delegated by that instrument? If it is implied from any provision of the constitution, it is in that clause, constituting him Commander in Chief of the Army and Navy of the United States, and he derives it from military usage. In England, the

King is Commander in Chief of the military force of his kingdom, not constituted such by law, but by right inherent in the crown. By the same right he can appoint all his officers, and can dismiss them at his pleasure, for they hold their appointments at his will. But if the king constitute another Commander in Chief, this power does not necessarily follow, for his authority is derived from the King, and he can only exercise the powers that are given him. The President of the United States possesses no powers inherent to his station, which he can exercise as Commander in Chief of the military force of the United States, for he is created such by law. His power is all conferred, and therefore limited. He cannot appoint Military officers, but by and with the advice and consent of the Senate. It is a rule that needs no illustration, that one cannot do by himself, what he can only perform in conjunction with another. And it would be strange, if the reverse of the rule was not equally true: that one cannot *undo*, what can only be performed in concurrence with another. If it is not so, it involves this absurdity, that a subordinate power, may annul the authority of its superior. The President and Senate of the United States, acting in conjunction, are this superior power, constituted such by law: Can the President alone, by an expression of his will, annul their acts, any more than he can repeal a law of Congress? If he can dismiss an officer, he cannot fill the vacancy, without the consent of the Senate. If he can dismiss one Commissioned Officer of the Army or Navy, at his pleasure, he can dismiss ten, and if ten, by the same authority he may disband your Army, and dismantle your Navy. He cannot create a military force; Congress alone has power to do that. Has he the power to destroy it, and defeat the objects of the law? Is such a power necessary to the exercise of any authority delegated to him by the Constitution, either directly or indirectly? It is believed not. But, on the contrary, so far as the Constitution and Laws of the United States, contain an expression upon this subject, every avenue to the exercise of such a power, by the President, seems to be guarded.

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The plea of necessity is at once silenced, for Congress have provided, by positive enactments, for the punishment of every military offence, by a trial and sentence of a Court Martial, which the wisdom of that body, and the greatest military experience of the country and of the age, deemed necessary to notice. If Congress had considered, that there was any other, or more summary mode of punishment, than that provided in the Rules and Articles enacted for the government of the Army and Navy, would they not have left some case for its infliction? If they had deemed it necessary or expedient, that the President should exercise this power, would the military code have contained no proviso, alluding to it, acknowledging its existence?

The acts of the old Congress of November, 1775, originating the Naval establishment of the United States, enacted rules and orders for the government of the Navy, and since the adoption of the present Constitution, by the acts of Congress of April, 1800, the same rules and articles, with such improvements as experience seemed to require, were enacted into a law of the United States. The original rules and orders, which were in force when my case occurred, gave no power to the President to dismiss an Officer without a trial; but on the contrary, provided in every case, for a trial by a Court Martial. The eighth section of the First Article of the Constitution, paragraphs twelve and thirteen, gives to Congress *alone* the power "*to provide and maintain a Navy,*" and "*to make rules for the government and regulation of the land and naval forces.*" The punishment of offences committed, by the land and naval forces, is a substantive part of the power here delegated to Congress by the Constitution. It is the principal end and object of the provision. Their jurisdiction over the whole matter is *exclusive*, consequently, no discretionary power is vested in the President, in relation to it. The *investing* of Congress with this power, *divests* it from all others.

In pursuance with this provision of the Constitution, the rules and articles for the government of the Navy, that were in force, when the Constitution was adopted, were continued and enforced, and Congress have, by

a solemn enactment, performed their whole duty under the Constitution, by making the provision required. And what does the law of Congress enact? Why that all military offences, known to the law, shall be tried by a Court Martial, and punished according to their sentence. Congress have left nothing for the President to do upon this subject, but to use the authority vested in him by the Constitution, to bring the offender to trial, in due form of law, and to act upon the sentence of the Court. The Constitution left him no power, but on the contrary, disarmed him of all authority, either in express terms, or by necessary implication, by conferring the whole of that authority upon another tribunal. In the power given to Congress, by the Constitution, to provide for the government of the land and naval forces, is included that of punishing offences against the laws enacted for that purpose. The Constitution has given this power *exclusively* to Congress; consequently, no part of it is vested in another. Congress have exercised that power, and have provided by law, in what way an officer shall be dismissed from the service, which is the severest punishment known to the law; consequently, no concurrent power is vested in the President to dismiss an officer and inflict that punishment, contrary to the provisions of that law. It seems impossible, therefore, to avoid the conclusion, that the President does not possess the power contended for.

Besides, the act of Congress providing for a naval armament, direct, that the Commissioned officers shall be appointed, and commissioned, as other officers of the United States are; that is, appointed by the President with the advice and consent of the Senate, and Commissioned by the President. These acts of Congress, also, give the President the power, to appoint all warrant officers without the concurrence of the Senate, making the distinction between such officers as were to be appointed, and to hold their appointments, *under the law*, and such inferior officers as were intended to be appointed, and to hold their appointments, *at the pleasure of the President*. The same distinction is also to be observed, in the appointment of other officers

provided for by law. The act of Congress providing for an executive department of Foreign affairs, for example, authorizes the President to appoint the Secretary, whose duties are prescribed by the act, and who, in the execution of his duty, is to conform, exclusively, to the will of the President. He is the organ by whom that will is communicated. It is proper therefore, that he should hold his appointment at the pleasure of the President, and subject to his revocation; for the acts of this officer can not be examined elsewhere.

It has been said, that this power has been conceded, and that the Commission of every officer contains such an expression. But the Commission is no part of the appointment, nor is it necessary to the officer to entitle him to the office. It neither adds to, or diminishes the rights and powers conferred by the appointment, but is only evidence, that the appointment has been made. This point has been settled by the Supreme Court of the United States, in the case of *Maybury against Madison*. It is evidenced too, by the Constitution, for the acts to appoint to office, and to commission the person appointed, are distinct provisions, they are not one and the same act. This distinction is apparent; for the second section of the second article of the constitution, authorizes Congress to vest by law, the appointment of certain inferior officers, in the President alone, the heads of Departments, or in the Courts of Law, and requiring the President to Commission the officers so appointed; evidently shewing, that to appoint and commission are distinct acts. When the President has nominated, and the Senate have concurred in the nomination, the appointment is complete, and the President has no power over the officer, unless he is removable at his will. Where an officer is removable at the will of the President, the appointment is of little concern, because the act is at any time revocable. But the Supreme Court have also decided, in the case before mentioned, "that when the officer is not removable at the will of the Executive, the appointment is *not revocable*, and cannot be annulled. It has conferred legal rights, which cannot be resumed" When

the appointment has been made, the power of the President over the office ceases, when, by law, the officer is not removable at his pleasure. The right to the office is absolutely and unconditionally vested in the officer appointed, and the Supreme Court have well said, that our Government would cease to be a Government of laws, if there was no remedy for the violation of a vested right.

It is evident that the constitution, the laws of congress, as well as the supreme court, in their adjudications upon this subject, contemplate, *only that class of officers, as liable to be thus removed*, whom the President alone has the power to appoint. If this is not so, where is the advantage of making a distinction in the power to appoint, if the executive alone may dismiss them all at his will. The presumption is as strong, that he will make judicious appointments, as it is, that he will always exercise a wise and sound discretion in removals from office. But the Supreme Court have also decided, that if an officer, *is not by law removable at the will of the President*, the rights he has acquired under his appointment, are protected by the law, *and cannot be extinguished by executive authority*. The only enquiry, then, that seems necessary, to settle the whole of this question, is—are commissioned officers of the Army and Navy appointed, to hold their appointments at the will of the President? It is humbly conceived, that they are not. The object of the constitution, in providing for their appointment by the President and Senate, seems to be, to secure suitable officers in the service; to require the combined information and judgment of the President and Senate, upon their qualifications, and to guard against the influence of favoritism and the use of intrigue which might be resorted to, if their appointments were left to the executive alone. The object of the laws of congress, providing for the military establishments of the country, certainly have contemplated permanent establishments; co-extensive with the demands of the country, and adequate to the service contemplated to be performed. To accomplish these objects, knowledge and experience in military science, na-

val tactics, and seamanship, are indispensable requisites. In the creation of a naval force, these qualifications could not have been expected to be possessed by the officers, in an eminent degree, when first appointed. They must necessarily be acquired afterwards. A permanency in office then was contemplated, and was the object of the constitution and the laws. The purpose of the law was, that the appointment should continue as long as the service, for which it was made, was to be performed; for the longer the officer continued in the discharge of his duty, the more experience he would acquire, and the more able he would be to serve his country. When an appointment was made, therefore, in pursuance of the law, it was as permanent as the law itself, and the life and ability of the officer to discharge his duty. It was subject to the provisions of the law relating to it, and to nothing else. The moment an officer of the land or naval forces, was duly appointed, his military conduct became subject to the rules and articles, enacted for the government of the army or navy. He was liable to be punished as those rules and articles prescribed, and in no other way. He was subject to no other tribunal, than the one there provided; and to which, jurisdiction of his case, is there given. Whatever terms may be inserted in his commission, cannot alter the effect of law, under and by virtue of which, he holds his appointment. The moment the appointment is made, all the rights and immunities of the office, vest in the officer, to the full extent of the purpose, and object of the law. The commission being evidence, *only*, that the appointment was made, is good to prove that fact, and for nothing more. It cannot restrict or limit the authority, derived under the appointment. When the appointment was confirmed by the senate, it was complete; and it is not in the power of the president, to alter its terms, by any expressions in the instrument, which is merely evidence, that the appointment was made. Suppose an alien to be naturalized, under the laws of the United States, and entitled to all the privileges and immunities of a native born citizen. His

civil rights are vested in him, the moment he has complied with the provisions of the law. But suppose the certificate of his naturalization, which is furnished him, *as evidence of that fact*, should contain some provision, not known to the law, restricting his privileges, or subjecting them to forfeiture altogether, and he should accept of it upon those terms. Would that deprive him of the rights of citizenship? No one will contend, it is believed that it would. The right was vested and could not be restrained by any concession, or by any provisions not contained in the law; for the public are interested that the law should have its full effect.

From a full examination of this subject, therefore, it is evident, that Commissioned Officers of the Army or Navy, *do not* hold their appointments at the pleasure of the President; consequently, are not liable to be removed at his will. That they *do* hold their appointments by special provisions of law; consequently, can only be removed in the way the law has prescribed, by sentence of a Court Martial. Hence I arrive at the following conclusion; that the right to dismiss an Officer, without a trial, is not an incident of sovereignty, essential to the exercise of Executive authority, not otherwise provided for by law, and therefore, *necessarily* vested in the President of the United States; because, the Constitution has provided for it, *and it is not necessary* that he should exercise the power. That the power is not delegated to him, by the Constitution, but on the contrary, is vested, *exclusively*, in Congress, and by Congress, has been exercised. It is not vested in him by necessary implication; because no power can be implied, in opposition to a positive provision of law. If this is a fair view of this subject, the President never did possess the power, to dismiss me from the service, without a trial. Of the soundness and accuracy of my arguments and opinions, the public will decide. It is a subject that cannot suffer by examination. If I am correct, I may render some service to my country, by raising this question. If I am not, it only re-

mains for some abler man than myself, to refute my arguments, and convince the public that I am wrong. I shall yield to conviction as cheerfully as any man, when satisfied that I am in error.

But Mr. Southard alleges, that I am *"entirely without claim to restoration, even if all my facts and arguments be sound."* Because, on the 3d of March, 1801, an act was passed by Congress providing for a Naval peace establishment, and for other purposes; the 3d Section of which, provides, that the President of the United States retain in the Navy service, in time of peace, nine Captains, thirty-six Lieutenants, &c. &c. and is authorized to discharge all the other officers, and this law he says, *"was shortly afterwards executed."* That there were, at the time, twenty-eight Captains in the Navy, in the full exercise and enjoyment of their Commissions. That the prescribed number, were retained, and the rest, whatever claims they had on public confidence, or on public gratitude, were obliged to become private citizens. Hence he observes, no one who was not retained, could be a Captain in the United States Naval service. He then concludes, that as I was not of the number, that whatever may have been my *previou* situation, my *subsequent* is *irreversibly* defined by the operation of that law.

From an examination of this act, and the course of proceeding under its provisions, it may not be found quite so conclusive upon this subject, perhaps, as Mr. Southard seems to suppose. And in order to bring this point fairly before the public, it will be necessary for me to digress, a little, from my usual mode of replying to this report, in order to introduce some evidence of what has been done under this law, and how much respect is justly due to the *Records* of the Navy Department. By reference to the Naval Chronicle, pages 180, and 181, it will be seen, that the act of the 3d of March 1801. *"authorized the President, when ever the situation of public affairs should, in his opinion, render it expedient, to cause to be sold, all or any of the ships or vessels belonging to the Navy, except the Fri-*

gates, UNITED STATES, CONSTITUTION, PRESIDENT, CHESAPEAKE, PHILADELPHIA, CONSTELLATION, CONGRESS, NEW-YORK, BOSTON, ESSEX, ADAMS, JOHN ADAMS, and the GENERAL GREENE, and directed the President to retain in service, NINE CAPTAINS, THIRTY-SIX LIEUTENANTS, AND ONE HUNDRED AND FIFTY MIDSHIPMEN, and authorized him to discharge all the other officers in the Navy service of the United States. But the Naval Chronicle observes, fortunately, the law did not direct the discharge of all the officers, excepting a certain number of captains, lieutenants, and midshipmen; otherwise, not a single ship could have been sent to sea. Fortunately too, the President, in exercising the powers with which he was clothed by this act, looked rather to its spirit than its letter, and gave its provisions a practical construction, which supplied its defects, and reconciled its incongruities.

We find also from the Chronicle, page 375, the following list of Captains were in the service before the law of 1801.—

CAPTAINS—John Barry, Samuel Nicholson, Silas Talbot, Richard Dale, Thomas Truxtun, James Sever, Stephen Decatur, Christopher R. Perry, Richard V. Morris, Alexander Murray, Daniel McNiell, Thomas Tingey, Patrick Fletcher; George Cross, Samuel Barron, Moses Brown, Moses Tryon, Richard Derby, George Little, John Rodgers, Edward Preble, John Mullanby, James Barron, Thomas Baker, Henry Geddes, Thomas Robinson, William Bainbridge, Hugh G. Campbell.

We also find from the same authority, Page 389, which is a history of the Navy, compiled from the records of the Department, shewing what *actually was done*, as well, as what was sometimes *intended*, that notwithstanding the law of 1801, the following list of officers were retained on the peace establishment under that law.

CAPTAINS—John Barry, Samuel Nicholson, Richard Dale, Thomas Truxtun, Richard V. Morris, Alex. Murray, Samuel Barron, John Rodgers, Edward Preble, James

Barron, William Bainbridge, Hugh G. Campbell, Thomas Tingey.

Here we find, that the Naval Peace Establishment never was reduced to Nine Captains, as Mr. Southard asserts, and if the records of the Department are entitled to any credit, they also prove the same thing. As Mr. Southard seemed to think, that this point was *irreversibly* conclusive against me, it became necessary for me to produce all the evidence I could obtain, upon this branch of the subject, to repel his opinion. It became necessary, in another point of view also; for Mr. Southard having placed so much reliance upon the *records* of the Department, to sustain his inferences, in justification of the conduct of Mr. Stoddert, it was expedient I should prove, that those *records* have been so made and kept, that they are not entitled to the *highest degree* of credit. The most conclusive evidence of this fact, that I could produce, was the record itself, compared with other testimony. Hence, on the 11th of May, 1825, I addressed a Note to the Secretary of the Navy, which produced the following results.

May 11th, 1825.

SIR—By referring to your report, I find it necessary to request of you, *official copies* of the dismissal of Captain John Rodgers, and of his reappointment to the Navy of the United States, as documents which are intimately connected with my case; especially as one part of your report is predicated upon the law of 1801.

I have the honour to be, with respect,

Your obedient servant,

ISAAC PHILLIPS.

Hon. Samuel L. Southard.

NAVY DEPARTMENT, May 14th, 1825,

SIR—Your letter of the 11th inst. was duly received.

As I do not perceive the propriety of sending copies of the records you ask for, in the case of Captain John Rodgers, I do not enclose them.

I am respectfully, Sir,

Your obedient servant,

SAM'L L. SOUTHARD.

Isaac Phillips, Esq. Baltimore.

BALTIMORE, 16th May, 1825.

Sir—Your letter of the 14th inst. *declining* to send me a copy of the record in the case of Captain John Rodgers, has been duly received. Am I to consider this as a *refusal* to supply me with a copy of the record which I requested? In the mean time, as my case has been acted upon by yourself and the President of the United States, will you have the goodness to forward my papers to me, at as early a day as is practicable?

I have the honour to be, Sir, your very
obedient and humble servant,
ISAAC PHILLIPS.

Hon. Samuel L. Southard, Sec. Navy.

NAVY DEPARTMENT, 27th May, 1825.

SIR—I return herewith the original papers, presented by you, in support of your application, to be reinstated in your rank in the Navy.

In a few days, you will receive an answer to that part of your letter of the 16th inst, which relates to Captain Rodgers.

I am, respectfully, &c.
SAM'L L. SOUTHARD.

Isaac Phillips, Esq. Baltimore.

NAVY DEPARTMENT, June 13th, 1825.

SIR—In conformity with the request contained in your letter of the 16th ult. I enclose you copies of three letters, which relate to the operation of the law of 3rd March, 1801, upon Captain John Rodgers. They are all the letters which can be found in the department on that subject.

You will readily perceive a contradiction between that of 11th of June, 1801, and that of the 22nd of October, in the same year.

It is proper for me to apprise you, that I have a letter from the then Secretary of the Navy, which declares that the letter of the 22nd October, 1801, was not sent; nor has he, (to the knowledge of the writer,) ever had the slightest intimation of the existence of such a letter on the records of the Navy Department, or the apparent, (not real,) disposition of the Government thereby indicated.

Under these circumstances it may, perhaps, be questioned, whether it be proper to send to you a copy of that letter, but as it is to be found on the records of the department, I think it best not to withhold the copy, but to apprise you of the facts connected with it.

I am very respectfully,
Sir, your most obedient servant,
SAMUEL L. SOUTHARD.

Isaac Phillips, Esquire, Baltimore.

NAVY DEPARTMENT, 11th June, 1810.

To Captain Thomas Truxtun—

Your letter expressing a wish to be informed, as early as possible, of the new arrangement of the officers, retained in the Navy on the Peace Establishment, has been received. The arrangements of the Lieutenants are not yet completed, that of the Captains, numbered agreeably to rank, is as follows;

| | |
|----------------------|-------------------------|
| No. 1, John Barry, | No. 6, Samuel Barron, |
| 2, Samuel Nicholson, | 7, John Rodgers, |
| 3, Silas Talbot, | 8, Edward Preble, |
| 4, Richard Dale, | 9, James Barron, |
| 5, Thomas Truxtun, | 10, William Bainbridge. |

You will observe that one Captain is retained more than the Law actually authorizes; this was owing to a desire that the Commodore's ship might have a captain. It is hoped that Congress will not only approve of this measure, at the next session, but it is expected another captain will be called into service for the commander's ship of the squadron intended to sail in January or February next.

The rank of the respective Captains being now permanently arranged it is expected that all will serve harmoniously with, and under each other, when they shall be called into actual service. The number for duty is too few, to admit of Gentlemen, who have heretofore disputed rank, to be kept separate.

There are yet a number of very respectable gentlemen who have commanded the ships of war of the United States, and not removed, that it is hoped Congress may, at their next session, choose to call into service.

Your pay and rations will be settled as usual up to the 1st day of July next, from that period, you will, as the law directs, be on half pay until called into actual service.

I am, &c.

(Signed.) HENRY DEARBORN.

I certify the foregoing to be a true copy from the records of this Department.

CHARLES HAY, Chief Clerk.

NAVY DEPARTMENT, 22d Oct'r. 1801.

Captains Hugh G. Campbell, Philadelphia, }
John Rodgers, Baltimore. }

Under the provisions of the Statute, entitled, "An Act providing for a Naval Peace Establishment, and for other purposes," the President has deemed it necessary to reduce the Captains to the prescribed number Nine. And in the discharge of this duty, he has the unhappiness to find that, highly as he regards your merits, he cannot retain you in Commission, consistently with the principles of selection, that have been adopted. You will, I trust, be duly sensible, how very painful it is to me, to make you this unpleasant communication; and be persuaded, Sir, my sensibility on the occasion is greatly increased, by considerations resulting from a personal knowledge of your worth.

You will be pleased to transmit to the Accountant of the Navy, a statement of your account, calculated up to the 1st of November, including four months' extra pay, who will attend to its adjustment, and remit the balance that may be found due you, agreeably to any order you may give him.

(Signed,) ROBERT SMITH.

I certify the foregoing to be a true copy, from the Records of this Department.

CHA'S HAY, Chief Clerk.

Navy Department, 13th June, 1825.

NAVY DEPARTMENT, 25th August, 1862.

Captain John Rodgers, Baltimore.

You will immediately repair to Washington, and take the command of the John Adams.

With much respect,

I have the honor to be, Sir,

Your obedient Servant,

(Signed,) ROBERT SMITH.

I certify the above to be a true copy, from the Records of this Department.

CHA'S HAY, Chief Clerk.

BALTIMORE, 3rd August, 1825.

Sir—I perceive by an extract from the Register of the Navy Department, (with which I have been furnished) marked A, that it is observed, that "*by the record of Letters received he returned his Commission to the Navy Department,*" speaking of me.—Will you have the goodness to send me copies of the original Letters there referred to, or any others of the same import, if any such letters are in existence; if not, be so good as to inform me from whom they were received, and what has become of them.—

Be pleased to send me copies of the recorded letters.

have the honour to be,

With great respect,

Your most obedient servant,

ISAAC PHILLIPS.

Hon. Samuel L. Southard,

Sec. Navy, Washington.

BALTIMORE, August 6th, 1825.

Sir—Since my return from the eastward, I was put in possession of your favour of 13th June last, relative to the operation of the law of 3rd March 1801, upon Captain John Rodgers. —In which you are pleased to remark, that “It is proper for me to apprise you, that I have a letter from the then Secretary of the Navy, which declares that the letter of 22nd October *was not sent.*” Will you be pleased to favour me with a copy of the Letter from the Secretary of the Navy, above alluded to?

I have the honour to be,

With great respect,

Your most obedient servant,

ISAAC PHILLIPS.

Hon. Samuel L. Southard,

Sec. Navy, Washington.

NAVY DEPARTMENT, 18th August, 1825.

SIR—In compliance with the request contained in your letter of the 6th inst. I enclose a copy of the letter from the Hon. Robert Smith, together with copy of a subsequent letter, received from him.

Being thus informed of the facts in this case, *it is hoped* you will feel no inclination, in any way, to present it to the public consideration, *which could not possibly be useful to yourself, and only calculated to create inconvenience to others.*

I am, respectfully, &c.

SAM'L. L. SOUTHARD.

Isaac Phillips, Esq. Baltimore.

BALTIMORE, June 6th, 1825.

SIR—In reply to your communication of the 27th ult. I have the honor to inform you, that you were perfectly correct in the presumption, therein expressed, that the letter of the 22nd October, 1801, had not been sent to Captain Rodgers; nor has he, to my knowledge, ever had the slightest intimation of the existence of such a letter on the records of the Navy Department, or of the apparent (not real) disposition of the government thereby indicated.

To my absence from home you will be pleased to attribute the delay of this answer.

The enclosed copies agreeably to your request are herewith returned.

Respectfully,

(Signed.) R. SMITH,

Honourable Samuel L. Southard.

BALTIMORE, Aug. 13, 1825.

SIR—From your letter of the 9th it appears that *Captain Phillips* has obtained some intimation of the letter of the 22nd October, 1801. *This is greatly to be regretted*, as it is an affair of extreme delicacy in relation, not only to Commodore Rodgers, but to the government. That letter was one of the incidents of the course of policy of the then administration—a policy that had for its object the retaining under the act of March 1801, as many of the good officers of the Navy as from its most LIBERAL interpretation could with propriety be effected. The statute was not considered imperative as to time. The President, it was believed, was required to exercise the authority of reducing the number of officers *only when he, from time to time, should deem it expedient*. This reasonable and legitimate construction afforded time to ascertain the comparative merits of the several officers, and it thus enabled him to select, as he did, a corps of heroes, whose brilliant achievements have abundantly gratified the lofty ambition of the American people. Under the influence of this laudible policy, the letter of the 22nd October, 1801, was not to have been transmitted to *Captain Rodgers* but in the event of a certain state of things then not likely to happen, and which, in fact, never did happen. It of course was one of those government secrets the promulgation of which could be attended with no benefit what ever to the community. Had this letter been sent, it would *ipso facto*, have dismissed Rodgers from the navy of the United States, and after such dismissal, had it taken place, the President would not, ten months thereafter, have had the power to order him, as he did, to Washington to take the command of the John Adams. It is obvious to every understanding, that an officer dismissed from the service cannot be restored to his former rank by the mere authority of the President. The letter, then, to Rodgers of the 25th August, 1802, ordering him to take the command of the John Adams affords demonstrative proof that he had not been dismissed from the Navy, that is, that the letter of the 22nd October, 1801, had not been sent to him:

Confident as I am in the correctness of my statement of this case, yet it is possible, but not at all probable, that my memory, after such a lapse of time, may have failed me, occupied as I have been since that distant period, in such multifarious matters, there may, for ought I know, have been effaced from my mind, traces of this affair, which might otherwise have aided my recollection. But from my present review of the case in all its relations, I cannot from any circumstance in my recollection, bring myself to believe—that the letter of the 22nd October 1801, was ever sent to Captain Rodgers.

Under my impression of the very delicate character of the letter of the 22nd October, 1801, I cannot consistently signify my approbation of any step, that may, directly or indirectly, lead to its publication, and on this ground, it appears to me, not proper for me to consent to the sending to Captain Phillips of a copy of my note to you of the 6th June last, which, bringing into view, as it does, that letter, could not fail eventually to induce its publication. If however, from coincidence of circumstances you may have considered it expedient to let Captain Phillips have a copy of the letter of October 1801, I see no objection to your furnishing him also

department, all difficulty vanished. It is exultingly sent to me, with a proviso, that is supposed to be conclusive, and special care is taken to remind me of the fact. But suppose Captain Rodgers did not receive this letter of dismissal, that appears upon record, as Mr. Smith alleges; will proof of that fact support the *credit* of the records? Mr. Southard says, my letter of dismissal is recorded, and inasmuch as it is, he feels bound to believe the records, in opposition to all the evidence that is offered to impeach their credit. Now, here is a letter recorded, also, dismissing Captain Rodgers from the service, yet he is willing to seize upon the *slightest presumption, to contradict* the record, and make it appear that it is false. Is not the evidence as strong and conclusive, from the records of the Department, that Captain Rodgers received his letter of dismissal, which is there recorded, as it is that I received the letter of dismissal, that is recorded? I have produced three witnesses to prove, on oath, that the record is false, as regards the letter of dismissal, *purporting* to have been sent to me; and yet Mr. Southard does not believe us, because our evidence contradicts this *sacred record*. But now, he makes no difficulty, in a similar case exactly; the record of a letter of dismissal of an officer, in relying upon the *opinion* of one witness, not expressed under oath, as conclusive and satisfactory proof, that the record is *false*. Suppose the record is wrong, as he wishes to make it appear; is it not as likely to be wrong in other particulars? If the record is falsified in one case, it is not entitled to credit in any other; consequently, it furnishes no reason why it should be relied upon, against me.

I have no wish to interfere with Captain Rodgers, and I should regret, if in defending myself, I should produce him any inconvenience. The Secretary seems to apprehend something of this sort, and begs my forbearance. I have a high regard for Captain Rodgers as an officer and a man, and have nothing to do with his case, further than to rely upon it as a precedent; which I think, defeats Mr. Southard's *conclusive* reliance upon the law of 1801, against my ap-

plication. It is not my fault, that I am compelled to rely upon this precedent; but Mr. Southard ought to have known, that by the construction put upon the law of 1801, the navy *never was reduced*, according to its provisions. Even the *record* of the Department shews, that ten Captains were retained under that law, on the 11th of June 1801, and that others *were not discharged*, in the hope that it would not be necessary. If the President could retain any number more than nine, the law did not necessarily dismiss me. He did retain thirteen, and by the terms of the law, he was at liberty to exercise his own discretion, whether to discharge the rest or not. This was the construction the President put upon the law, and by this he was governed. The Naval Chronicle proves this, and the record of the department furnished me by Mr. Southard, so far as its *credit goes*, proves it likewise. But I was dismissed the service before the passage of this law; I was not on the roll of the Navy at the time the reduction took place, if ever it was made. I was not in the view of congress when the law was passed, nor of the President when it was partially acted upon; consequently I could not be effected by its provisions. Besides, the law did not necessarily require the dismissal of all the Captains but nine, and if the President found room to retain any one more than that number, under the law, there was room for me, and the law did not necessarily discharge me. There were more retained under it, and no one so retained could say that his retention was more strongly sanctioned by the law than another. If the law necessarily discharged all but nine, which among the number retained, I would like to know, is legally in the service? Who can now decide, who are the supernumeraries? The construction put upon the act of 1801, by the President, proves, that he considered the law entirely provisional, and not imperative. Suppose the President in the exercise of his discretion under this law, had not dismissed any of the officers. Would they not all have remained in the service? If the President could exercise any discretion at all, upon

this subject, all the officers he did not *actually* dismiss, certainly remained in the service. He did not dismiss me, under this law, consequently, if I had any claim to be restored before, that claim remained; for it was not impaired by the law, or the acts of the President.

But if I was dismissed by legal and competent authority, as Mr. Southard finally concludes I was, had not the President the same power to restore me, that he had Captain Rodgers? The records of the Department prove, that Captain Rodgers was dismissed, under the law of 1801; and it will not be contended, I suppose, that if the President *actually* dismissed an officer under that law, but that such dismissal would be legal. The records also prove that Captain Campbell was dismissed, as appears by the letter of Mr. Smith of the 22nd of October, 1801; and yet, he remained in the service until his death. What faith then is to be attached to the records which are contradicted by such well known facts? The letter of Mr. Secretary Smith, of the 25th of August, 1802, called Captain Rodgers into the service, in which he has ever since continued, without any new appointment. If he could be *legally* called into the service, in this way, after having been *legally* dismissed; why, I would like to know, does not the President possess the same power, to call me again into the service, who have been *illegally* dismissed? Or if Captain Rodgers was dismissed under the law of 1801, and could be called into the service again in the manner he has been, at the will of the Secretary, or of the President; has not the President the same power in the case of another? His dismissal was just, the law required it; yet, he was recalled into the service, by a simple order of the Secretary of the Navy. If my dismissal was legal, being by legal authority; yet if it was *unjust*, has not the President the same power to reinstate me? If he has not, how does it happen that such a power has been exercised? Or is the *record* false in this particular too? But Mr. Southard is ready with a presumption, that seems to set all things right; and Mr. Smith gives him full credit for being

correct in his intimations. The letter of dismissal was never sent to Captain Rodgers, say these Gentlemen, the *record* to the contrary notwithstanding. The record, then is proved, by Mr. Southard's *presumption*, confirmed by Mr. Smith's opinion, *to be false*. Now I thank the Gentlemen for aiding me to prove, that no reliance ought to be placed upon the records of the Navy Department, in establishing any fact, not supported by other testimony. But I regret that they felt themselves obliged to take a course, which compels me, against my feelings, to say, they are both under a mistake; for I have documents in my possession to prove the fact, that Captain Rodgers did receive his letter of dismissal. This will support the record, in regard to Captain Rodgers case; but what becomes of it in relation to Captain Campbell? The record shows that he too, was dismissed; and it also proves the contrary, by shewing, that he remained in the service till his death. Which is true?

The letter of Mr. Smith of the 13th of August 1825, is a commentary upon the Government and himself, of rather an equivocal character. He regrets extremely that I should have *obtained an intimation* of the letter of dismissal of Captain Rodgers, of the 22nd of October, 1801. That letter, he says, was an *incident of the course of policy* then pursued. But it puts a period to Mr. Southard's conclusion, that the law of 1801, necessarily deprived me of all redress, even if every other point was in my favour. For Mr. Smith says, that the law of 1801, *was not* considered by the President as *imperative*, but left him to the exercise of his judgment, to dismiss an officer, from time to time, as he might think it *expedient*. Here again he contradicts the *record*, and says, the letter was not to have been sent to Rodgers, and calls it a *Government Secret*. I hope for the credit of the Nation, the records of the Navy Department do not contain many such secrets. That there are Government secrets, necessary to be concealed, no one feels disposed to doubt. But it has never before been considered, I believe, that what merely concerns the life, lib-

erty, honour or fortune, of an officer of Government was such; that the mere appointment or removal of an officer, was of that character. The record upon all such matters, it is thought, should be as public as the sun at noon day. There is no necessity for secrecy upon such transactions, and the public have a right to expect, that the acts of the Government, and the records of their proceedings, will bear the strictest scrutiny. I did not expect, therefore, to meet with such an objection, and have it considered a subject of *regret*, that I should have known a circumstance, that never ought to have been concealed from the public. My sole object has been to justify myself. To shew that I have been *illegally and most unjustly injured*, and to obtain such fair and honourable redress, as the laws of my country can allow me. I have felt desirous of presenting my case to the world as it is; to stand or fall by its merits, and to expose all the fraud, management, intrigue and sophistry, that has been resorted to in the whole case, in opposition to me.

Mr. Southard, as a last resort, attempts to rouse the feelings of the officers of the Navy against my application, by pronouncing it a piece of injustice to place me at their head, after being twenty five years absent from their corps. Is it my fault that I have been thus absent? If it is not, it is no reason against my return. The officers of the Navy should certainly thank him for his kind care of their feelings. Some of them at least, will not have reason to thank him very sincerely, for his zeal in their behalf, if it only serves to expose the tender thread, by which they hold their stations. It is easy to see the motive, which has induced him to *hew his way* through all obstructions; through good report and evil report, to the conclusions he has arrived at. He will however, scarcely aid his friends by it. The officers of the Navy are more deeply interested, that no injustice should be done to one of their corps; that no arbitrary assumptions of power; no art or intrigue should be countenanced, and relied upon as precedents, to hurl

them from their stations, without a cause of complaint, or a hearing, than that an injured officer should receive justice for his unmerited wrongs, though it might place him at their head. I have never asked a higher favour than that my case should be judged by honourable men: men who have *sense* to discern what is just and right, and *honour* to perform it.

I would ask no greater favor now, than to submit the decision of my case, to the officers of the Navy; whom, Mr. Southard thinks, would be so much injured if my petition should be granted; for I should feel assured of that *impartial justice* from their sentence, which he has not done my case in his report.

I have thus followed Mr. Southard through this labyrinth of inferences, arguments and opinions. His report is before the public, who will judge of its justice, its wisdom, and its candor. My evidence, my statements, and my remarks, are also before them. I ask but a full examination of the whole case, and an impartial decision. This I am confident I shall obtain from my fellow citizens, to whom this appeal is made.

Before I close this subject, however, I beg leave to call the attention of my readers, to the charge brought against me, by Mr. Southard; that I deserved punishment for going to sea without my Commission. It will be recollected, that my instructions directed me to repair to Hampton Roads, and put my ship under the command of Captain Truxtun; under whose orders I was to sail on the voyage contemplated. When I joined Captain Truxtun, I was bound to obey his orders, whether I had my Commission or not. My appointment was sufficient to subject me to the command of my superior—and it will be remembered, that while under the command of Captain Truxtun, his Commission would have protected my ship.

The following order from Captain Truxtun will prove these facts.

CAPTAIN TRUXTUN'S ORDERS.

SIR—I shall immediately make the signal for the fleet to make the best of their way, believing them out of all danger from French cruisers, and

having convoyed them agreeably to my instructions to this station. As our Navy is in its infancy, and as very many Captains I suppose are made who may interfere with your rank—I have in justice to you, inserted the following paragraph, in my dispatch to the Secretary of the Navy. “I am perfectly well satisfied with the conduct and attention of Captain Phillips of the Baltimore, to every part of his duty, and I beg leave to recommend him to your particular notice, and shall be obliged by your mentioning him to the President in my name.”

I am, with great respect,

Your most obedient humble servant,

THOMAS TRUXTUN.

United States Ship Constellation, October 9th, 1798.

P. S. After the receipt of this, you will proceed to the westward until you are out of sight of the Constellation. (so that it may not be known where you are going) and then make the best of your way off Charleston bar, examining all strange vessels; on your arrival off the bar, cruise three or four days, and then return to Hampton Roads, continuing from the time you leave the fleet, to examine as aforesaid all vessels you meet. On your arrival in the Roads, you will make report to me what you have met, &c.

I wish you success,

Captain Phillips.

T. T.

To repel the other charges, brought against me by Mr. Stoddert, the following letters and depositions from the Hon. Solomon Dickinson, one of the members of the Senate of Maryland, a gentleman of integrity and worth, who was with me when the outrage upon the Baltimore was committed, is testimony of too high an order to be disregarded. Mr. Dickinson is one of the few survivors among the officers who were attached to my ship, but not having received his statements, in time to insert them in the order intended, I have considered it proper to notice them here.

TRAPPE, TALBOT COUNTY, August 10th, 1825.

ISAAC PHILLIPS, Esq.

Dear Sir—I have received yours, together with the enclosures. I have endeavoured to call to mind the circumstances that took place when the U. S. ship Baltimore fell in with the British squadron, commanded by Com. Loring, off the Havana:—You will please examine the enclosed. And I assure you, Sir, I felt equal indignation, with any of your friends, at the abrupt and uncourteous manner of your dismissal.

Be pleased to accept my good wishes for your health and prosperity.

Very respectfully, your obedient servant,

SOLO. DICKINSON.

STATE OF MARYLAND—TALBOT COUNTY, *to wit* :

On this 11th day of August, 1825, personally appeared Solomon Dickinson, before the subscriber, a Justice of the Peace, for said State and County, who, being by me duly sworn, upon the Holy Evangelists of Almighty God, depose and sayeth—That he was a Purser on board of the United States' ship *Baltimore*, commanded by Captain Isaac Phillips, in the year 1798, when she was convoying a fleet of merchantmen from Charleston to the Havana; that when off the Havana, we fell in with a British squadron, under the command of Commodore Loring, of the *Carnatic*, by which some of the fleet was cut off; that Captain Phillips was invited, as this deponent believes, by Commodore Loring, to visit his ship, which he did, and that during his absence, our ship's crew was mustered and overhauled by a British officer, in search of British seamen—and deponent thinks about fifty of our crew taken off; all of whom were afterwards returned, except five, who were detained. This deponent also certifies, that he understood and believes, that Captain Phillips resented with considerable warmth their impressment. He thinks there passed between Captain Phillips and Com. Loring some communication, when the latter made sail and left us.

S. DICKINSON.

In witness whereof, I have hereunto set my hand and seal.

JNO. STEVENS, JR. (Seal.)

TRAPPE, 14th September, 1825.

DEAR SIR—I received yours stating to me the charge exhibited against you by Mr. Stoddert, late Secretary of the navy, "of having written letters calculated to excite mutiny among the officers and crew of the *Baltimore*," and enclose you my deposition.

I hope you may be able to remove the charge, but sir, a lapse of twenty-six years, I fear has left but few officers alive. Mr. Clopper, the sail maker, must be an old man. I hear of so few of them that I really feel pleased when the existence of any is reported to me. You mention something about the *expense* and *trouble* you occasion me, please give yourself no uneasiness on that head. I should be degraded in my own opinion, did I mind *such* when attempting to render justice to my old Commander. My best wishes attend you in your endeavours to rescue yourself from the opprobrium cast on your reputation by the Secretary.

With great respect,

Your obedient servant,

S. DICKINSON.

State of Maryland—Talbot County, to wit.

On this 12th day of September, 1825, personally appeared Solomon Dickinson before the subscriber a justice of the peace for said State and County, who being by me duly sworn on the Holy Evangely of Almighty God, depose and sayeth—that he was attached to the United States Ship *Baltimore*, at the time Captain Isaac Phillips, her commander, was dismissed in the year 1799. And, understanding from Captain Phillips that Mr. Stoddert, the then Secretary of the Navy, has accused him with

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"having written letters calculated to excite mutiny among the officers, and crew," this deponent certifies that he received several letters himself from Captain Phillips after that event, when on board said ship, in none of which, was there any thing like a disposition to disturb the peace and quiet of the Ship's company nor does he recollect having heard of any received by any officer calculated to have that effect.

S. DICKINSON.

In witness whereof I have hereunto set my hand and seal.

WILLIAM GIST, Justice Peace. (SEAL.)

In the fearful, but glorious struggle for our independence, my career in life commenced, in the service of my country. My father, who was one of the Massachusetts BOARD OF WAR, during the revolution, was devoted to the cause of freedom. His conduct and opinions made a deep and lasting impression upon my feelings. Imbibing a share of his patriotic enthusiasm, while a boy at school, I abandoned the security and comforts of home, and the society of friends and connexions, to encounter the hardships, and brave the dangers of war. I entered as a Midshipman on-board the armed ship CUMBERLAND of twenty guns, commanded by Captain COLLINS of Portland. In this vessel I made a long and successful cruise. On my return to Boston at its termination, I entered in the same capacity, on board the state ship MARS of twenty guns, one of the vessels fitted out by the Board of War at Boston, and commanded by the intrepid Captain Sampson. In this service I continued about three years; with what success to the American cause, the history of the events of that period will tell. In this vessel, I sailed to France, and returned to Boston, with a cargo of arms and munitions of war, that had been purchased there, for the use of the American army.

During the whole of our revolutionary war, I was devoted to the service of my country. I do not mention these circumstances, by way of boasting of my public services; or to claim any peculiar merit for them: for it was at a time, when every man was required to perform his full share of duty. But I mention them to shew, that I have always been ready, at my country's call, to obey her voice. In all

the political changes that have taken place, when party politics were the most ardent; I appeal to all who have ever known me to bear testimony, that whatever may have been my private opinion, it has never influenced my public conduct. To yield obedience to the constituted authorities of my government, I have held to be the duty of every citizen, whether the administration is in the hands of those I might have preferred or not. And in time of war, it is even more necessary, that this maxim should be felt and cherished. At all times, and upon all occasions, from my early youth, whenever my services have been required, and could be useful to my country, I have ever been found ready to render them.

I have thus fellow-citizens, laid the whole of my case before you. I have nothing extenuated, "nor set down aught in malice." I have endeavoured to give you a plain unexaggerated statement of facts, with such reasons and explanations, as appeared to me to be just and necessary. My object has been, to make this transaction, with all its consequences, known and understood by the American people. They can now see and judge for themselves, of the flagrant injustice that has been done me. The report of the Secretary of the Navy, with all its inconsistencies, yet has formed the basis of the President's decision, against my application to be restored to my rank. The documents are before them, and speak for themselves.

I again entered the service of my country, not to promote my own interest, or to gratify a restless ambition. I entered it with some confidence, it is true, that I was able to perform my duty, with honor to myself, and benefit to my country. I relied upon a zealous and faithful discharge of the trust reposed in me, for the approbation of my Government. With exalted opinions of its purity, and the strict integrity of its administration, I never imagined, that injustice would reach me, from that quarter. Against it, in any shape, I was unguarded; for I apprehended none. Unused to intrigue myself, I was unsuspecting

of it in others. Incapable of persecuting others, I did not expect to be marked out for its victim. Intent alone, upon performing my own duty, I did not suspect others of, intentionally, neglecting theirs; and least of all, did I anticipate that the blame would be charged upon me. Frank, unreserved, and open in my conduct towards every one; I did not dream of seeking for enemies, where only, I expected to meet with friends.

A short tour of public duty, however, soon taught me the falacy of my opinions, and the weak foundation of my faith. Until branded with disgrace, I was unconscious of error. Until overwhelmed with injustice, I was bold in confidence; and I would have pledged a thousand lives, had I possessed so many, for the justice of that Government, I had served with zeal and fidelity. How I have been requited, this history will shew.

In a country boasting of its Republicanism, of its liberty, its justice; in its Government of laws, and the purity of its administration, injuries cannot pass unredressed.

If I have suffered unjustly, it would be a libel upon our Government, its administration, upon our laws and civil institutions; upon the justice and good feelings of the American people, to suppose, there were no means of redress; no redeeming power to mitigate oppression, or satisfy the demands of justice. That I have suffered unjustly, I appeal to the candor of my countrymen. I ask not their sympathy, to paliate my errors, but an impartial judgment, to redress my wrongs. I seek not pity, but justice, stern inflexible justice. If there was any thing in this whole transaction, for which I was in the least responsible, that could reflect dishonor upon the American flag, let me bear it; but let it be painted in colours that shall bear examination, that will not fade with time, or depend upon contingences, that our *future* history may contain the *truth*. I ask no concealment, for I fear no scrutiny. I appeal to every man, whose mind is not so wrapped up in prejudice, as to be incapable of sustaining an honest sentiment, or

not open to conviction, if there was any improper conduct of mine, that merited censure. I appeal to the testimony of every one, who now survives to tell the story; to those who were under my command, and saw what passed, or learned it at the time, as well as those, who were interested in the cruise, and dependant upon my conduct. Is there any thing, in all this testimony, but one universal opinion, that my conduct was correct; of one general burst of indignant feeling, at the base injustice that has been done me? What is all the testimony against me, but a tissue of falsehood, of contradictions, of fraud, and deception.

Am I to blame for my forbearance? For remaining, so long, blinded to the true character of the proceedings against me? Let those censure me, who have reviled the administration of the government *without* cause, and have doubted the purity of its conduct *without* evidence. Let those condemn me for this delay, whose suspicions were awake, and who might have said to me—

“There are more things in heaven and earth HORATIO,

“Than are dreamt of in your philosophy,”

for I suspected it not. But it is not too late to justify myself to the world, even if I obtain no redress. It is not too late to show to the American people, the *miserable attempts* that have been made, to brand me with dishonour. It is not too late to expose some of the subterfuges, and pranks of office, that are “played before high heaven,” even in this good land of ours, and put the people upon their guard. We have little to fear from an arbitrary exercise of power, unless it creeps upon us, through excess of confidence. One act of despotism, is usually followed by another, and if submitted to, soon ceases to excite wonder or surprise. The first, is quoted as a precedent, to justify a second; a second to justify a third; till the point, at length, is conceded as lawful. Pursue this course, and your government will soon cease to be a government of laws. For this boasted privilege, you may have a government of *discretion*, or more likely, of *caprice*. Instead of statutes, you may be blessed with a code of arbitrary edicts; and your constitution

be made to bend to the force of precedents, and the doctrine of *necessity*. In whatever light my case is viewed, it is believed, it will prove my justification, against the charges that have been made against me. Whatever may be its result beyond that object, is to me, of little moment. But the interest of every man in the nation, who wishes well to his country, his government, and to mankind, is involved in its decision. For it will eventuate in the triumph of principle, or in the prostitution of justice, to policy. It will eventuate in a bold and manly expression of indignant feeling at oppression, and an honest display of republican virtue, or in a base surveillance to expediency and power.

But loudly as we boast of justice, and of liberty; proudly as we look down upon the feeble efforts of despotism, to enslave the world, and control the thoughts and actions of men; yet even here, republican virtue is more revered in *name*, than in *practice*; and many a despot conceals his love of arbitrary power, under the simple garb of freedom and equal rights.

No point was more anxiously sought to be gained, in the formation of our government, than that the civil rights and duties of all, should be defined and limited. From the executive of the nation, to the humblest citizen, this has been looked to as the great attractive power, that keeps the functions of all within their proper orbits. The least deviation deranges the system, and creates confusion. In the constituted authorities of the government, it produces oppression and injustice; in the people, crimes. While the former escape with impunity perhaps; the latter are punished. While the former, if censured at all, pass with a momentary burst of feeling; the latter, weep in penitence, or suffer in ignominy and disgrace. It is not a trifling matter then, that power should be confined within its destined limits; that the weak should be protected, and oppression punished.

The political struggles of the country have rendered the people of the United States, ardent lovers of liberty; and

a high sense of moral rectitude, a feeling of generosity, induces them, naturally; to wish its blessings diffused and enjoyed. The same feelings prompt them to frown with indignation upon oppression, injustice or persecution. Justice to myself, while smarting under premeditated injury, and unmerited reproach has brought me before them. Confidence in the rectitude of their feelings, and of my own conduct, induced me to ask their decision. Unmasked, I stand before them, and await their judgment. The integrity of my own heart will sustain me, be that judgment what it may.

ISAAC PHILLIPS.

ERRATA.

- Page 4, line 11, for *plane*, read *plain*.
 6, 17, for *proven*, read *proved*.
 44, for *A. Tumroe*, read *A. Tunnoe*.
 52, last line, read *highly*.
 69, line 7 from the bottom, after *did*, read *not*.
 73, 4 from the top, for *was*, read *were*.
 91, second paragraph, for *act*, read *acts*.







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